APPENDIX E

PM USA Suppliers

Suppliers

A. Introduction

PM USA utilizes outside suppliers to provide direct materials. The direct materials required for our business include flavors, adhesives, filter tow, various types of paper, and packaging. In addition we are in the process of establishing relationships with vendors for vision systems using technology developed by PM USA R&D. During the past several years R&D has adopted a strategy vis a vis direct material suppliers which stresses four major points: 1) ensure that PM USA can fully specify the materials we buy; 2) ensure that our suppliers respond to PM USA's needs; 3) develop working relationships with our suppliers so that new developments are proprietary to PM USA for a specified period of time; and 4) reduce the number of materials we require whenever possible. In 1990 a fifth point was added to our overall strategy with the formation of the Supply Chain Group. It is the objective of this group to shift the responsibility of direct materials' quality assurance from PM USA to the actual vendor. The current status regarding each type of direct materials is discussed below.

B. Flavor Suppliers

In 1985 R&D established agreements with flavor vendors to permit our receiving qualitative composite disclosures for our compliance with Section 7 of the Labeling Act. In 1986 those agreements were amended to provide for quantitative data on selected ingredients as necessary. In December, 1986, it was decided that R&D will know and be responsible for each and and every Philip Morris ingredient. Therefore, a program was begun to establish exact chemical specifications for each flavor. To facilitate this program, agreements were established with each vendor to provide for semi-quantitative disclosure of ingredients, by flavor, utilizing ranges of <0.1%, 0.1-1.0%, 1.0-10.0%, and >10%. A program was initiated at PM USA R&D, The Flavor Specification Program, to independently corroborate formulations provided by our suppliers, reduce the total number of ingredients (see below), and develop specifications for each flavor we buy. This program was later expanded to include the German Certification Program. This effort ensures that all of the ingredients in the flavors and casings shipped are acceptable under German law. The Flavor Specification Program was completed in the first quarter of 1991, and quality assurance on existing flavors was transferred to the Flavor Center, although the responsibility for establishing specifications for new flavors still resides with R&D.

In addition to our effort involved in establishing flavor specifications, PM USA R&D has also been working for some time to reduce the total number of ingredients we add to tobacco. The rationale for continuing to reduce the number of ingredients we use is a pro-active response to possible government regulations. Such regulations could be targeted on one or more specific

ingredients, or it could be in the form of a labelling requirement. More will be said about labelling requirements later. Since work in this area was initiated in 1986, the total number of ingredients used by PM USA has been reduced 30.4% as of December, 1990. Yearly reductions are as follows: December, 1986, 11.4%; December, 1987, 7.0%; December 1988, 2.2%; December, 1989, 10.4%; and December, 1990, 3.5%. PM USA's current goal is to reduce the number of ingredients by 2-3% each year. The number of ingredients on the list submitted in December, 1990, was about 500, which has been reduced to 490 to date. It is expected that the list submitted in December, 1991, will contain 485 ingredients. In addition work continues on the development of a reduced ingredient Marlboro as well as a "zero" ingredient Marlboro.

There are two specific issues regarding the purchase of flavors that need to be addressed this year. The first involves bills pending in Congress requiring listing of cigarette ingredients on the pack. The critical issue here is, will the bills specify "natural flavor" or "nature identical." The nature identical category is well recognized in Europe and is clearly distinguished from synthetic. Such is not the case in the US. Work has been ongoing for some time to ensure that all ingredients we use in the US are either natural or nature identical. Considerable progress has been made; however, about 2% of the ingredients we use are in neither category. The only bill currently before Congress dealing with ingredients is the Kennedy Bill. Two sections of the bill deal specifically with this subject. One section authorizes the Secretary of HHS to limit or ban the use of any tobacco ingredient. The second would require companies to disclose on packages or in package inserts tar, nicotine, and carbon monoxide levels and all ingredients except spices, flavorings, fragrances, and colorings. Current interpretations of this bill suggest that both natural and synthetic flavorings could be simply labelled as such. However, it still may be possible that synthetic ingredients would have to be listed, by name, on the pack. If PM USA needs to restrict its ingredients to natural flavors, a considerable amount of work would have to be done in a short time. Natural flavors generally contain a large number of minor components which could alter cigarette subjectives. In addition, the cost of flavors would certainly increase because synthetic equivalents are not as expensive as the natural flavor in most cases.

The second issue arises from the fact that in the past eighteen months there has been a significant decrease in the number of flavor vendors due to mergers and acquisitions. Table 1 summarizes this activity. To date there has been no impact of this activity on PM USA's ability to purchase needed flavors and ingredients. We do not anticipate any difficulties in the future even if further mergers occur. Moreover, we should continue to support those vendors that continue to support research into new flavors for tobacco.

Table 1
Recent (18 Months) Merger and Acquisition Activity in the Flavor Industry

Acquiring Company	Acquired Company
Bayer	Creations Aromatiques
Boehringer-Ingelheim	Peter Dreidoppel Essenzenfabrik
Bush Boake Allen	Food Materials
CPL Group	Danco
CPL Group	Berk
Givaudan	Fritzsche
Martin Braun Backmittel & Essenzen	Meistermarken-Werke
Quest International	Sheffield Products
SANOFI	Continental Flavors & Fragrances
Universal Foods	Felton
Universal Foods	Fantasy Flavors
Universal Foods	Williams

What is of concern is the acceptance by the vendors of PM specifications for flavors. For instance, our specifications state that certain antioxidants cannot be used. This has caused difficulty with some flavors where antioxidants have been found, but the vendor states that they have not added them. The vendors claim that they have little influence over their sources for some of the raw materials, and that these unwanted components are being added further back in the supply chain. Considerable work remains to be done before this matter can be resolved. In addition, there is a statement in our specification agreement that requires the vendor to notify PM USA and have our approval before changing sources of raw materials. Many vendors are not happy with this statement, and this may cause them to resist totally accepting PM specifications for flavors.

C. Filter Tow Suppliers

1. Hoechst Celanese

Celanese has become the first supplier with whom PM USA is partnering. They scored the highest of all PM USA suppliers as measured by the supplier certification program. As a spin-off of the Supplier Partnering program, a joint filter development confidentiality agreement has recently been approved by both parties. A first meeting has been held with Celanese personnel in Charlotte, North Carolina, to discuss possible joint projects, and a second meeting is scheduled at Hoechst's Summit, New Jersey, laboratories in the near future.

Celanese is continuing to develop their CA web filter material with both Kimberly-Clark and Dexter. Philip Morris is continuing to evaluate materials as they become available, but samples are still unacceptable to date because of high filter RTD variability, subjectives, and the high cost. We have obtained information indicating that one of our competitors may introduce a product in 1992 incorporating CA web. The filters would probably made by either American Filtrona or Baumgartner. Baumgartner is building a new production facility in North Carolina.

Celanese has reversed their position for the previous year by developing in-house capability to cut cellulose acetate staple at 1/8". They have installed a commercial size cutter at their CelRiver plant, and have produced materials which PM USA has approved for use. They have also supplied PM USA with 40,000 pounds of 1/8" cut staple for PM web development and will continue to support PM in this area. We suspect that since Celanese now has 1/8" staple cutting capability, that they will start to evaluate CA web made with this material.

2. James River

Although James River is a paper company, they are discussed in this section since our chief interaction with them involves a joint project to manufacture PM web for use in filter materials. James River has an excellent research facility in Neenah, Wisconsin, and they have made this facility available to us during the past year for work directed toward the development of PM web. We have been working with the James River Gouverneur mill for several months to carry out a mill run of PM web in order to have sufficient material to make machine made filters and cigarettes. The original run was not successful because of problems with refining of the CA staple as well as dispersion of the furnish. These problems have been solved, and a second run of PM web which took place at the end of August was successful. We have an exclusivity agreement in place with James River which gives us complete ownership of any successful developments resulting from this work with respect to the tobacco industry.

3. Eastman

At the request of PM USA, Eastman has produced samples of tow with menthol incorporated into the dope prior to spinning. The cellulose acetate fibers produced were fabricated into filters which gave cigarettes with stable menthol delivery over time. This process would also eliminate the use of alcohol in our mentholation processes. Unfortunate- ly, this product would require a dedicated spinning and acetone recovery facility at Eastman. Additional work with this material is in progress to determine if there are other methods to accomplish the same results without necessitating a large capital investment.

Eastman continues to develop and offer low dpf tow items, and PM USA has evaluated 1.2 and 1.4 dpf tows. Neither of these is commercially available at this time; however, 1.4 dpf tow could be available in approximately six months after a commitment from PM USA is made.

Eastman has indicated that they will not support our CA staple needs without a long-term commitment from PM. Consequently, our work with them in this area has ended. Eastman also declined to enter into an agreement with PM to jointly develop covalently modified cellulose in order to develop flavor-release compounds.

4. Courtaulds

A trip was made to Courtaulds to review their facilities and capabilities, and further discussions were held in the areas of cellulose modification, CA staple production, web filters, fibrids, and tencel. A non-disclosure agreement has been signed, but it is currently being modified to better protect Courtaulds' proprietary information. Also, an exclusivity agreement is being reviewed by them for the use of their tencel material.

We have requested a number of different types of materials for Courtaulds for the PM web program. They have provided several samples of 3 mm cut staple, but thus far these samples have been unacceptable for making PM web. Their fibrids, in conjunction with cellulose acetate staple, appear to offer webs with higher surface areas than PM webs. To date, however, paper making with this material has not been fully developed because of lack of material. Tencel tow has been requested, but has not yet been received. Samples of de-acetylated cellulose acetate staple have been evaluated as a filter material, but they were found to be subjectively unacceptable. Samples of acetylated cellulose have also been received, but they could not be made into a sheet material. No additional work is planned for this product; however, further research on deacetylated cellulose acetate is still in progress.

5. American Filtrona

American Filtrona has been contracted with to manufacture dual paper core concentric filters in two configurations (100's and king size) to support the Merit Ultima program. Production is under way and on schedule. They are also providing experimental filters to support other programs.

6. Filtrona International Limited

Filtrona International has absolved themselves of all contractual obligations to American Filtrona. They have been supplying filters for PM Super Lights 100's.

D. Packaging Suppliers

PM USA established a Packaging Materials Chemical Evaluation Project to ensure that all substrates, adhesives, inks, and coatings for cigarette packaging and printed materials meet the following criteria:

1. Environmental regulations which apply to air, water, and solid waste.

2. Freedom from deleterious compounds which are undesirable for product use.

3. Subjectively acceptable chemical levels and composition.

The project deals with 50 ink, coating, and chemical suppliers; 5 paper and board suppliers; 30 converters, 13 of which are considered primary vendors; and 10 miscellaneous suppliers. At the present time confidentiality agreements have been established with 30 vendors.

To accomplish these goals a Packaging Materials Evaluation Committee was formalized in July, 1991, consisting of five persons from R&D and two persons from Purchasing Technical Services (PTS). It is the function of this group to review formulations and minimize the time and steps required to recommend components for packaging and, thereby, meet the requirements of manufacturing, marketing, and PM USA's customers. The scope of the project involves:

1. Chemical composition review including primary packaging, promotional items, and tippings.

2. Chemical analysis including solvents by headspace gas chromatography, heavy metal determinations, and pyrolysis (mass spectrometry and infrared spectroscopy).

3. Communications including presentations to QA management, vendor reviews and quarterly meetings, and correspondence concerning specifications, guidelines, and recommendations.

These items require information gathering on components used in packaging items and inks, chemical analyses to determine whether subjective and environmental guidelines are being met, and communication of results and recommendations to line management.

Topics which are addressed include:

1. Materials chemical evaluation.

2. Water-borne lacquers (converted to date - 99.96% of cartons, 99.00% of flip top boxes, and 0% of labels).

3. Water-borne inks.

4. Subjective evaluations and trials.

5. Rotogravure vendor analytical requirements.

6. Lithography.

7. Philip Morris Companies interactions.

8. Computer data and information requirements.

9. Cohesive program for QA, R&D, and PTS.

A number of examples are discussed below.

Formula breakdowns for ink systems, coatings, board material, etc., are submitted to PTS by our vendors. PTS maintains a data base on these materials and assigns test numbers. Actual physical samples are also received when vendors cannot or do not wish to disclose formulations. The formulations and samples are sent to R&D Project 5001, Packaging Studies, which in turn sends them to Analytical Research. The formulations are reviewed, and recommendations are made as to acceptability prior to use by our printers. Samples are submitted to the Materials Evaluation Laboratory, or other appropriate analytical lab, for analysis. Recommendations for these samples are given based on the analytical results. The recommendations are made following PM USA guidelines which cover a toxicological assessment of the compounds, potential disposal problems, and employee safety. The results are reported back to Packaging Studies who reports them back to PTS. If a product formulation has been approved by Analytical Research, it must still pass subjective testing (coordinated by Packaging Studies) and machinability testing before it is qualified for use. In 1990 Analytical Research received over 157 formulations and samples for review. To date over 75 samples have been received this year. PTS received over 800 for consideration in 1990, and 500 have been received year-to-date.

Another aspect of packaging which is monitored is residual solvents which remain after printing. PTS, in conjunction with Packaging Studies, has developed a list of solvents which cannot be used and threshold limits for others. The solvents are monitored on finished packaging using head space gas chromatography. Incoming Materials QA monitors all new brands and selected production brands. Project 6505, Special Investigations, analyzes new formulations before they reach production, and also provides identification of unknowns in new formulations and those found in production runs.

A recently established testing protocol for packaging materials has been for the determination of four heavy metals that were designated by the Conference of Northeastern Governors legislation. Initially, a procedure was developed by Project 1759 which uses energy dispersive X-ray fluorescence to screen packaging for these selected elements. This was not a quantitative procedure, but one which can establish that the levels in the material are below the 600 ppm limit stated by the legislation. An X-ray fluorescence method is now in place which is quantitative. The protocol is to look for any one of the elements chromium, cadmium, mercury, and lead, at a level above 25 ppm or a total above 100 ppm. If either of these situations are encountered, the sample is digested, and the result is confirmed by inductively coupled plasma analysis. To date no samples have exceeded these criteria. Screening of current production will be done by brand family. Three brand families, Marlboro, Lark, and Virginia Slims, have been completed. New brands will be screened as they are received.

Particular emphasis has been placed on the development of water-borne lacquers and inks in 1991. Originally problems were encountered with printing using water-based systems as well as the tendency of the pigments to rub off after printing was complete. At this time three suppliers have developed inks which appear promising; namely, Thiele Enghdahl, Sun Chemical, and DSI. Current activities with pigments from these suppliers involve removing methyl and ethyl cellosolve from the formulation, and approval of biocides. It should be noted that water-borne inks still contain organic solvents. The major difference is that water is added at the press to control ink viscosity rather than organic solvents.

E. Paper Suppliers

We continue to work with our two domestic paper suppliers, Kimberly-Clark and Ecusta, as we have done in the past two years. All on-going projects are carried out as joint development projects, and most products developed through these joint development projects are covered by exclusivity agreements. Our activity with Kimberly-Clark has been primarily in the areas of low sidestream paper, papers to control puff count and ash flaking, and papers for Project Tomorrow.

During 1991 a single-wrap was developed for Superslims. This paper utilizes a high surface area calcium carbonate as the inorganic filler and mono potassium phosphate as the sizing agent. The utilization of the mono potassium phosphate was a discovery made at PM USA R&D, and as a consequence we were able to obtain an exclusivity agreement on this paper from Kimberly-Clark covering a wide range of paper parameters.

Considerable work was devoted to the development of a paper for BOLD which would reduce puff count and eliminate ash flaking. Using information gained from our work on the low sidestream program, we developed such a paper by increasing basis weight slightly and using a very high level of calcium carbonate filler. Because of the fact that there was nothing novel in the papers we designed (only the combination of properties was novel), it was not possible to obtain an exclusivity agreement for these papers. In addition we discovered after our work was completed that Papeteries de Mauduit is marketing a similar paper. As a consequence, three patents were filed covering these papers as the key component of certain cigarette designs.

We have been working with Kimberly-Clark on two different approaches for Project Tomorrow. The first approach is the use of coating papers off-line using a rotogravure technique with a colloidal cellulose slurry. Initial results for these papers have indicted that further work should be pursued. We are currently in the process of working out an exclusivity agreement with Kimberly-Clark covering this technology. The second approach involves a three way agreement among Kimberly-Clark, Molins, and PM USA covering the design and development of equipment to apply strips of non-porous paper to cigarette paper. Kimberly-Clark holds a patent on the paper itself, but was unable to develop the technology for manufacturing the paper.

Equipment to accomplish this was designed and built at PM USA, and Molins is now in the process of investigating techniques for commercializing this equipment.

Considerable effort has been devoted during the past year to ensuring that Kimberly-Clark's QA methodology can be correlated with our own paper analyses. A serious discrepancy was discovered in Coresta porosity measurements, and that discrepancy has now been essentially eliminated. A more difficult problem involves the methodology that Kimberly-Clark uses to determine calcium carbonate levels. In almost all cases the data they report are based on an on-line Measurex technique which makes it impossible to compare methodologies on specific paper samples. This situation is unsatisfactory, and negotiations with KC are in progress to solve this problem.

Agreement on compatible QA techniques is extremely important with regard to a current project which has as its objective the establishment of meaningful cigarette paper specifications. Current specifications allow rather wide tolerances, particularly for porosity and calcium carbonate. Work has been completed to establish specifications for 1-2 mg tar delivery products and is in progress for full flavor delivery products. In addition we have signed a confidentiality agreement with all our paper suppliers (Kimberly-Clark, Ecusta, and de Mauduit) under which they are providing us with the identity of all additives used in the manufacture of cigarette and tipping papers. Kimberly-Clark has completed supplying all information, and no problems have been encountered. DeMauduit has supplied some information; however, the process is not complete. Ecusta has supplied us with all the necessary information, and evaluation of this information is in progress.

The only joint development program with Ecusta involves the development of low sidestream papers using magnesite as the primary inorganic filler. This work is currently in progress, and an exclusivity agreement is in place. We had been working with Ecusta on the use of their vanillin-release compound for the Ambrosia I program. However, existing agreements with RJ Reynolds has caused them to cease collaborating with us in that area.

F. Adhesive Suppliers

PM USA has recently initiated a project dealing with adhesives; namely, the Adhesive Characterization Project. The objective of this project is to determine the qualitative and quantitative make-up of the adhesives used in PM USA factories in order to develop meaningful specifications and to determine that these adhesives comply with safety and regulatory requirements. We currently purchase adhesives from seven vendors. Three of these, Ajax, Fuller and National, are major suppliers. Findley and Upaco provide significantly fewer adhesives, and we purchase only one adhesive each from Eastman and Polymer. These adhesives are used for tippings, cigarette sideseams, labels, blanks, innerframes, stamps, carton

ends, carton top flaps, case packers, plug lap seams, tow anchors, combiners, and tear tape. All adhesives used as of June 27, 1991, listed by PM USA factory are shown in Table 2.

Confidentiality agreements are now in place with all seven vendors. These agreements disclose specific formulation information. However, each adhesive vendor has one or two tiers of secondary suppliers of components. Agreements are not yet in place with these secondary suppliers, with the exception of those cases where a primary supplier is also a secondary supplier to other vendors we deal with directly.

To characterize those adhesives currently in production use, four persons in the Analytical Research Division and approximately 0.5 additional R&D personnel are committed to the project for 1992. In addition support from Operations Services, Purchasing, QA, and Manufacturing is provided.

The scope of the project during 1992 involves:

1. Complete chemical characterization of adhesives.

2. Characterize pyrolysis products of adhesives.

3. Establish confidentiality agreements with secondary vendors.

4. Reconcile differences between stated components and those found analytically with the vendors.

5. Determine the regulatory status of components.

The project is scheduled to be completed in the first quarter, 1993.

G. Vision Systems

The Vision Inspection Technology Project is currently involved with PM-vendor agreements and/or contracts as a result of pack inspection (i.e., Osiris), incoming materials inspection, and 100% web inspection. PM confidentiality agreements are in effect with Dalsa and Quay regarding the 100% web inspection. Dalsa has sold us tunable diode laser cameras. Quay has provided us with expertise in imaging acquisition and data handling.

Itran is under contract to PM USA to develop a commercial Osiris system according to our specifications. A PM confidentiality agreement is in effect with Itran. Engineering is responsible for monitoring the development effort by Itran. PM USA owns the Osiris

technology and has a licensing agreement with Itran which prevents them from selling systems to companies other than PM in the tobacco or coffee markets. For every system sold by Itran, PM will receive a royalty payment of 8%. The purchase of equipment from DataCube and Matrox has not required the establishment of any type of vendor agreement. These companies sell imaging boards.

Production Service Technology is under contract with PM USA to build a material handling-motion control system designed to our specifications. This system will be part of the incoming materials inspection system being developed in the project. A PM confidentiality agreement has not been necessary.

APPENDIX F

APPENDIX F

Political and Social Trends

Political and Social

A. Introduction

The major trends regarding the political and social aspects of smoking continue unchanged from previous years. The most pressing issue our industry faces in this arena is ETS. Although smoking restrictions have been a significant problem in previous years, the problem will certainly accelerate rapidly if the EPA report on second hand smoke is issued. Legislative activity in the ignition propensity area has now been finalized, and considerable R&D resources have been committed to meet this challenge. The industry faces the possibility of several different types of marketing restrictions. A complete ban on advertising appears unlikely during the plan period. However, the industry clearly faces restrictions on marketing to minors including restrictions on vending machines. Advertising bans in other areas of the world, however, will definitely occur during the plan period. The only law which is currently under consideration by the US Congress is the Tobacco Product Education and Health Act of 1991, usually referred to as the Kennedy Bill. Although this bill has a number of clauses pertaining to marketing of cigarettes, it also addresses ingredient and product liability issues. A key ingredient issue outside of the United States concerns the question as to what regulations will be utilized by the EEC after harmonization in 1992. A relatively recent issue involves discrimination in the work place. This issue is being aggressively addressed by our Corporate Affairs Department, and significant progress has been made. Excise taxes are a continuing challenge. The product liability area currently has minimal activity. This is a consequence of the case before the Supreme Court which may determine if Congress meant to exempt US cigarette companies from product liability suits by passing the warning label law. The last political issue to be covered concerns our international business only; namely, restrictions on tar and nicotine levels. This section will then end with a brief discussion of smokers' and non-smokers' attitudes.

B. Smoking Restrictions and ETS

The Environmental Protection Agency (EPA) recently convened a Scientific Advisory Board to review evidence on the alleged health effects of environmental tobacco smoke (ETS). A draft report released by the EPA in June, 1990, concluded that second hand cigarette smoke should be designated a cause of lung cancer, and the agency has named a 16 member panel to review its report for accuracy. In early December, 1990, the panel's Chairman, Dr. Morton Lippman, stated that there was a consensus among the review panel that involuntary exposure to tobacco smoke causes lung cancer in non-smokers and increases risk of respiratory illness in children. He also stated that ETS should be classified as a known human carcinogen, and that work place smoking policies should reflect the hazard.

The review process has not yet concluded. The study has at this time not been released by the EPA.. However, the request by the tobacco industry to have an internal panel review the document for scientific accuracy has been recently turned down. The final step in the process is for the EPA Administrator, William Reilly, to give his approval. Should this report be issued by the EPA, the next step in the process would involve the Labor Department's Occupational Safety and Health Administration (OSHA). OSHA has already published a draft Federal Register notice in April, 1991, which is a request for information on indoor air quality in the work place. The final notice has not yet been published, but it anticipated in September, 1991. Should the EPA officially rule that second hand smoke (ETS) is a human carcinogen, OSHA would have no choice but to develop work place indoor air quality standards for ETS. It is likely that many companies will simply ban smoking on the job rather than invest the necessary money to revamp their air-handling systems to comply with OSHA regulations.

The decision by the Scientific Advisory Board to classify ETS as a cause of lung cancer is extremely disappointing since it is clearly at odds with the scientific results that have been obtained to date. Of the 24 published studies on spousal smoking and non-smoking lung cancer, the majority (19) have reported no statistically significant elevated risk associated with ETS exposure. The few studies that do report a statistically significant association are considered weak and difficult to interpret because of design and conduct problems. Of nine US Studies, none - not even the largest case-control study ever conducted in the US - has reported a statistically significant association between spousal smoking and lung cancer. Even more disappointing is the fact that a number of estimated yearly US deaths associated with ETS has now been completely accepted by the press, despite the fact that the individuals responsible for this number, Dr. Stanton Glantz and Dr. William Farmley of the University of California at San Francisco, were in no way associated with either the Scientific Advisory Board or the EPA, and that the vast majority of these deaths were attributed to heart disease which was not even mentioned in the EPA study.

ETS is not currently a major issue outside of the United States with the exception of Australia. Its importance does appear to be growing internationally, however. As a consequence, we anticipate that it is likely to become an issue in Canada and the EEC during the plan period. Therefore, there may be new product concepts, such as a low sidestream cigarette, that may be marketable in other areas of the world.

The situation in Australia is severe. On July 1, 1986, the Tobacco Institute of Australia ran an advertisement in several Australian newspapers similar to ads running in the United States and elsewhere. The Australian ad stated that, "there is little evidence and nothing which proves scientifically that cigarette smoke causes disease in non-smoker." The Australian Federation of Consumer Organizations demanded that the Tobacco Institute retract its statement and agree never to run it again. When the Institute refused, the Federation sought an injunction in the

Federal Court of Australia under the Trade Practices Act to prevent the Institute from repeating these assertions. A 91 day trial was held over a 10-month period between November, 1989, and September, 1990. All relevant scientific studies were reviewed; 16 witnesses were heard in Sydney, including four Americans flown in by the defendant; and a trip was made to London by the judge to hear four distinguished epidemiologists as rebuttal witnesses. A 210-page opinion was rendered on February 7, 1991, granting the injunction.

Even without the issuance of the EPA report, smoking restrictions continue to increase. Currently 26 states and more than 300 localities have enacted laws to restrict smoking in restaurants. This has occurred despite public opinion survey data that indicate that for a majority of people, smoking is not of primary importance when dining out. Twenty-eight states and approximately 300 localities have enacted laws governing smoking in the work place. Sixty per cent of all US companies now restrict smoking, up from 16% in 1980. Some major companies, such as Proctor & Gamble, have made the decision to ban smoking entirely. One quarter of 283 companies surveyed in 1989 by the Administrative Management Society were smoke free, up from 14% in 1988.

It is a virtual certainty that smoking restrictions will increase during the plan period. If for some reason the EPA report is not issued or is repudiated, these increases will grow slowly. If the report is issued, there will be a rapid increase. It is quite likely, however, that the EPA report will issue. In addition we can also expect that the number of deaths attributed to second hand smoke will also increase as unprincipled anti-smoking zealots supply figures having no basis in fact to the press. It is unfortunately likely that there are no actions that R&D can take to stem this tide. However, as mentioned above, this issue is only now receiving attention outside of the US and Australia. Consequently, R&D must continue to develop products which can demonstrably reduce ETS and/or sidestream to prevent this movement from spreading to the rest of the world.

C. Ignition Propensity

The Fire Safe Act of 1990 is now law. It was passed and funded in August, 1990. This law represents a compromise between the original draft of this legislation and the tobacco industry in that it does not provide for a performance standard. The law requires the following.

1. Consumer Product Safety Commission (CPSC) directs National Institutes of Standards and Testing's (NIST) Center of Fire Research to:

   a. Develop a standard test method to determine ignition propensity;

   b. Compile data for cigarettes using the developed test method; and

c. Conduct laboratory studies on computer modeling of ignition physics to develop valid user-friendly predictive capability.

2. CPSC will - Initiate a study to collect baseline and follow-up data about characteristics of cigarettes, products ignited and smokers involved in fires.

3. Health and Human Services and CPSC will - Develop information on changes in toxicity of smoke and resultant health effects from modified cigarettes and societal costs of cigarette-ignited fires.

4. Advisory Group (Tobacco Study Group from the 1984 Cigarette Safety Act) will:

a. Hold hearings to develop information to carry out its functions; and

b. Advise and work with CPSC and NIST.

5. Reports required once funds are appropriated:

a. 13 months - CPSC and Advisory Group Report to Congress.

b. 25 months - CPSC and Advisory Group Report to Congress.

c. 36 months - Final Report by CPSC and Advisory Group to Congress.

It is anticipated that NIST will have developed a standard test method to determine ignition propensity by the end of 1991. Once the test is developed, it must be validated. This is scheduled to be completed in late 1992. R&D currently has significant resources devoted to addressing the ignition propensity problem. Several approaches are being pursued concurrently; however, there is no way to monitor progress until NIST issues its report on a test method.

A copy of the complete Fire Safe Act of 1990 is attached at the end of this section.

D. **Marketing Restrictions** - An intensification of legislative efforts to restrict or ban the marketing of tobacco products can be expected to take place over the plan period. The focus will continue to be on banning or restricting outdoor and point of sale advertising, prohibiting sampling, and severely restricting vending machine sales. Proponents of these restrictions use the youth and smoking issue to advance their legislative agenda.

1. Advertising Bans

It is highly unlikely that there will be a broad-based advertising ban on tobacco products in the US during the plan period. There has been some modest effort to restrict certain types of advertising on the state and municipality level. Currently only one state (Utah) and 11 municipalities restrict outdoor advertising. However, outdoor advertising bans were recently repealed in Iowa and Boston, MA. Eighteen bills dealing with advertising restrictions were defeated in 1990. Twenty-nine bills are currently pending in states and municipalities. Another issue which is receiving some attention is the sponsorship of sporting events by tobacco companies. Although no laws have been introduced addressing this issue, Health and Human Services Secretary, Dr. Louis Sullivan, is campaigning strongly to eliminate the relationship between the tobacco companies and sports in the US.

Although an advertising ban is extremely unlikely in the US over the next five years, there is a much higher likelihood of broad-based advertising bans being implemented elsewhere in the world. An advertising ban was implemented in Canada beginning in 1988. This law forbids all forms of tobacco advertising and severely restricts other forms of marketing such as sponsorships and promotions. Imperial Tobacco and RJR-Macdonald Inc. filed separate suits in 1988 challenging the ban on tobacco advertising. In July, 1991, Quebec Superior Court Judge Jean-Jude Chabot ruled that federal regulations banning the advertising of tobacco products were unconstitutional. Although the Quebec ruling voids the legislation, the Canadian Government has decided to appeal the ruling. The advertising ban will remain in force during the appeal process.

There was considerable support within the EEC for a proposal to ban tobacco advertising after 1992. The EC Commission, the EEC's administrative body, had proposed the ban in May, 1991, as a way to cut smoking-related illness and standardize advertising rules across its twelve member states. The proposal would have prohibited all tobacco advertising in the press, on billboards, and elsewhere, and to ban T-shirts, lighters, or other non-tobacco products from bearing a tobacco company's trademark. In June, 1991, however, health ministers from Britain, Denmark, Germany, and the Netherlands criticized the plan as an ineffective way to curb smoking and an infringement on advertising freedom. Opposition from those nations should be sufficient to defeat the proposal when it comes up for a final vote.

2. Sampling and Vending Machines

Restrictions on both sampling and vending machines are both supposedly claimed as ways in which to limit the availability of cigarettes to minors. Four states, California, Maine, Nebraska, and Utah, ban or severely restrict sampling as do 29 municipalities. Seventeen bills to ban or restrict sampling were defeated in 1990, but 21 bills are still pending in municipalities. An example of such a bill is the one passed in California. The measure prohibits promotional

giveaways of cigarettes or smokeless tobacco products in any public building, park, or playground, or on any public street or sidewalk.

The issue of restriction of vending machine sales is of somewhat more concern to the industry than the sampling issue. There has been a substantial increase in the introduction of state and local legislation to restrict or ban sales through vending machines in the late 1980's. However, contrary to the argument that vending machines allow easy access to cigarettes for minors, recent surveys compiled by the vending industry indicate that 80% of all cigarette vending machines are located in places not frequented by minors. Nevertheless, in May, 1990, Dr. Sullivan proposed model state legislation to ban tobacco vending machines, impose license on all tobacco retailers and raise the minimum age for sale of tobacco products to 19 years.

Twenty-four states and the District of Columbia considered vending machine legislation in 1990, 16 of which were defeated. Five states and the District of Columbia have legislation pending. Three states passed sales restriction bills. Alaska passed a retail license agreement; Minnesota and Indiana allow machines only in work places, liquor establishments, or those with locking devices. Local ordinance proposals appear to be a serious threat for the future. Restrictions on the sale of tobacco products, primarily vending related, were proposed in 133 localities in 1990. Measures were adopted in 56 cities. Most notable are New York City, Westchester County, Pittsburgh, Houston, and Sacramento. Legislation is still pending in 62 localities including Chicago, Minneapolis, Buffalo, Philadelphia, and Seattle.

Restriction of sales to minors has now been adopted almost universally in the US. Forty-four states impose a minimum age, from 16-19, for the sale of cigarettes. Only six states have no minimum age requirement.

E. The Kennedy Bill

The Tobacco Education and Health Protection Act of 1991, better known as the Kennedy Bill, was introduced by Senator Edward Kennedy and 19 co-sponsors in June, 1991. This legislation proposes:

1. Establishing the Center for Tobacco Products to oversee $50 million in grants for anti-smoking counter-advertisements and $25 million in grants to fund state enforcement of minimum age and vending machine laws;

2. Eliminating federal preemption as a defense in product liability actions;

3. Permitting states and localities to restrict the placement and location of billboards and transit advertising;

4. Requiring the disclosure to HHS, on a brand by brand basis, of all ingredients, as well as tar, nicotine, and carbon monoxide levels;

5. Requiring the companies to disclose on packages or in package inserts tar, nicotine, and carbon monoxide levels and all ingredients except spices, flavorings, fragrances, and colorings;

6. Authorizing the HHS Secretary to limit or ban the use of any tobacco ingredient;

7. Requiring front and back package warnings, which must occupy 20% of the panel space, and imposing a new addiction warning.

At the present time this bill has been referred back to committee, and it will definitely not be acted on by the full Senate in 1991. Nor can it be predicted, at this time, if the bill would pass the Senate in 1992. However, there is a strong likelihood that at least some of these proposals would be voted into law during the plan period. Several of these proposals, if they became law, would be highly undesirable. Establishing a Center for Tobacco Products, and funding it with $75 million, is a waste of taxpayers money that would accomplish nothing but providing anti-smoking zealots in state legislatures with sufficient funds to cause problems for the industry. The labelling requirement may or not be a major problem depending on whether or not only natural flavors are excluded from the labelling requirement (see Appendix E). Lastly the requirement to increase the warning label to 20% of the panel space, both front and back, would severely limit our ability to create attractive packaging. In addition it has also been proposed that the current warning label, "Surgeon General's Warning: Cigarette Smoke Contains Carbon Monoxide" would be replaced with the following label: "Surgeon General's Warning: Smoking is Addictive. Once you start, you may not be able to stop."

Most of the potential challenges posed by the Kennedy Bill cannot be addressed by R&D. The two major points that can be addressed are the labelling requirement and the need to disclose carbon monoxide levels. As has been pointed out before (see Appendix E) should there be a requirement to move to all natural ingredients, considerable work will need to be done. If there is a requirement to list carbon monoxide levels in smoke, PM USA has the opportunity to gain a competitive advantage by introducing technology which will minimize carbon monoxide delivery.

F. Ingredients

The major domestic issue regarding ingredients is related to the Kennedy Bill and has already been covered above and in Appendix E. However, there are two issues which are of considerable importance to our international business. The first issue is concerned with EEC

harmonization; namely, what regulations will the EEC adopt regarding tobacco ingredients. Although there is no way of answering that question with certainty at this time, there is a likelihood that the German regulation would be adopted. At this time the most likely scenario is that a revised or modified German regulation will be accepted for all of the EEC. A less likely alternative is that there will be a list of permitted substances agreed upon by the EEC member nations.

The second issue is the necessity to deal with a myriad of ingredient regulations depending on the country involved. There are major differences from country to country with respect to ingredient regulations ranging from no regulations to extremely specific rules. This information is summarized in Table 1.

G. Discrimination in the Work Place

This issue is a relatively recent one. In the last several years there have been a number of companies and municipal agencies which have prohibited their employees from smoking off the job. These employers are infringing on personal life style decisions. In a majority of instances, employers are using the cost savings argument, citing various studies purporting to link smoking to poor health, absenteeism, accidents and lost productivity.

Only three states have adopted laws permitting employers to discriminate against smokers in hiring: Massachusetts (public safety personnel), North Dakota (hiring preference for Department of Health job applicants), and Florida (fire fighters). Legislation concerning police and fire fighters in Kansas was repealed in 1990. In contrast, five states enacted employment protection in 1990. Legislation to prohibit employment discrimination of smokers was proposed in 21 states in 1990, up from 12 states in 1989. During the first six months of 1991 eleven additional states enacted such legislation, bringing the current total to 18 states.

Table 1
Country by Country Ingredient Regulations

Country	Tobacco Regulation
Austria	Snuff only is regulated
Belgium	80% tobacco leaf Permitted substances; also forbidden list
Denmark	No limitations on flavors
Finland	Same substances as permitted under Food Laws No specified limitations Medical Board has asked for disclosure
France	List of authorized substances New regulations anticipated 85% tobacco
Germany	5% total limit on specified humectant List of authorized additives Permits natural and nature identical substances, but there is a forbidden list
Netherlands	No regulations
Portugal	Newly enacted regulations; official translation to be received
Spain	List of permitted substances
Sweden	Snuff is regulated
Switzerland	Total ingredients less than 25% of cigarettes Humectants less than 10% List of permitted substances
United Kingdom	Froggart List

Table 1 - Continued
Country by Country Ingredient Regulations

Country	Tobacco Regulation
Yugoslavia	List of permitted substances; forbidden list
Egypt	List of permitted substances and acceptable food flavors
South Africa	No regulations
Tanzania	No regulations
New Zealand	Government requests disclosure

Note: No information is available for the following countries:

Bulgaria
Cyprus
Czechoslovakia
Greece
Hungary
Ireland
Italy
Poland
Romania
Turkey

H. Excise Taxes

State excise taxes will continue to increase during the plan period due to two factors. First, the organized anti-smoking movement has made higher cigarette excise taxes an important part of their legislative agenda, saying that smokers should pay for the alleged "social costs" imposed on the economy. Anti-smoking forces also believe that rising retail prices will contribute to smoking quit rates. The first reason has no validity. On the other hand, there is no question that increasing taxes will cause a decrease in smoking. This point is perhaps best illustrated by the present situation in Canada where cigarette sales fell by 19.6% between February, 1990, and February, 1991.

The second factor is a consequence of the poor fiscal health of many populous states. A forecast from the National Association of State Budget Officers indicates that 50% of the states face potentially serious revenue shortfalls, raising the probability of tax increases. States anticipated to be hardest hit economically for fiscal year 1991 and the rest of the 1990's are in the Northeast, including New York, Connecticut, and Massachusetts.

In 1990, excise tax increases were proposed in 35 states, of which 8 passed. The 1990 weighted average state excise tax was 23.8 cents per pack, a 1.9 cent increase versus 1989, slightly higher than the average annual increase between 1985 and 1989. The combined taxes (federal, state, and local) increased 2.7% on an average carton in 1990 to $4.92. Proposals that earmark existing or new tobacco tax revenues for specific state expenditures, such as education and health services, were introduced in 29 states, of which two (Arizona and Florida) passed in 1990. This passage rate of 6.9% is less than half the 1989 level.

With respect to federal excise taxes, the budget accord of 1990 calls for a $2.00 per thousand federal excise tax increase to $12.00 per thousand in 1993. No other federal tax increases are anticipated during the plan period.

I. Liability Suits

There has been extremely little activity regarding liability suits during both 1990 and the first half of 1991. This is because the Supreme Court has agreed to consider the issue of whether the warning label can be interpreted as federal preemption as part of the Cipollone case. The Court is expected to hear the case in late 1991 and to render a decision sometime in 1992. If the Supreme Court should decide that Congress did indeed intend to protect the industry from liability suits through the warning label law, it would be a mortal blow to further liability suits. However, if the Supreme Court rules otherwise, little would be changed. It would still be incumbent on the prosecuting attorney to prove that the individual(s) he represented was not aware of the reported dangers of smoking.

J. International Tar & Nicotine Levels

Countries which currently have regulations regarding tar and nicotine levels in smoke are restricted to the Middle East and the Pacific Rim. No new regulations have been passed since last year. Table 2 lists countries which presently regulate tar and nicotine levels, and specifies the maximum deliveries allowed.

Although no new countries have been added to the list shown in Table 2, on January 1, 1993, the first round of tar ceilings go into effect for the EEC. At that time cigarettes in most member nations cannot exceed a delivery of 15 mg tar. It is likely that Turkey and Greece will be able to obtain an exemption to allow them more time to bring their tar levels down. On January 1, 1998, the second tar ceiling goes into effect for the EEC; namely, 12 mg. The vast majority of products marketed by PM Eeurope in the EEC can be reformulated to meet the 15 mg ceiling with relatively few problems. Meeting the 12 mg tar ceiling, however, will require considerable effort in order to maintain subjectives as close as possible to current products.

One other change which will take place shortly within the EEC is that ISO methods will officialy become the standard methods. This will occur as soon as the methods are published, most likely fall, 1991. It is likely that Japan will also adopt the ISO methods with the exception of the recommended butt length. Other countries, such as Hong Kong and Singapore, are also expected to follow suit.

K. Smokers' and Non-Smokers' Attitudes

A smoker segmentation study suggests that smokers' attitudes are heavily influenced by non-smokers' opinions and actions, which are becoming less favorable toward the industry. Among non-smokers, the percent of anti-smoking "zealots" has been increasing while the percent of "supporters" has decreased. Zealots, who represented 17% of the non-smoker population in 1990 compared to 14% in 1988, would like to see smoking abolished and are extremely intolerant of smokers. Although they are a small minority, the demographic profile of this group - older, upscale, and from the Northeast - suggest that they are opinion leaders in society. At the opposite end of the spectrum are supporters (14% of non-smokers in 1990, down from 17% in 1988). Supporters like smokers and support smokers' rights. However, this group tends to be downscale and less involved than the zealots politically.

In terms of smokers, the percent of people who identified themselves as "proud smokers" actually increased (from 15% in 1988 to 16% in 1990), while "self conscious" smokers decreased significantly (from 22% in 1988 to 17% in 1990). This finding suggest an increase in committed smokers that choose not to quit despite continued social pressure. These

Table 2
Countries in Which Tar and Nicotine are Regulated

Country	Printed Parameters	Maximum Allowed Deliveries
Bahrain	Tar, SN	Tar - 12 mg SN - 0.8 mg
Kuwait	Tar, SN	Tar - 12 mg ± 20% SN - 0.8 mg ± 20%
Oman	Tar, SN	Tar - 12 mg SN - 0.8 mg
Qatar	Tar, SN	Tar - 12 mg SN - 0.8 mg
Saudi Arabia	Tar, SN	Tar - 12 mg SN - 0.8 mg
Singapore	Tar Banding	Tar - 15 mg ± 15% SN - 1.2 ± 15%
Hong Kong	Tar Banding	None
Japan	Tar, SN	Printed Tar ± 20% Printed SN ± 20%
Australia	Tar, SN, CO	Voluntary Code: Tar - 14 mg SN - 1.4 mg CO - 20 mg

SN - Smoke nicotine
Tar Banding - Language specified for various tar ranges

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findings will have implications for the tobacco industry in terms of potential new product categories. Cigarettes which meet the desires of smokers, while accommodating non-smokers (given that the zealots cannot be accommodated) such as low-sidestream products could provide potential volume gains, although products with such attributes have been generally unsuccessful to date.

Attachment 1

Calendar No. 168

102D CONGRESS
1st Session

SENATE

REPORT
102-112

TOBACCO PRODUCT EDUCATION AND HEALTH PROTECTION ACT OF 1991

JULY 19 (legislative day, JULY 8), 1991.—Ordered to be printed

Mr. KENNEDY, from the Committee on Labor and Human Resources, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1088]

The Committee on Labor and Human Resources, to which was referred the bill (S. 1088) having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

TABLE OF CONTENTS

I. SUMMARY OF THE BILL

As reported by the Committee, S. 1088 authorizes a new title XXVII of the Public Health Service Act (PHS) to establish a program of information, education, and research regarding the hazards of tobacco use. Subtitle A of the new title XXVII establishes a

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Center on Tobacco and Health within the Centers for Disease Control (CDC). The functions of the Secretary, through the Director of CDC, shall include public education and related activities on the health consequences of tobacco use; support of research efforts; assistance to States in enforcing State laws on the sale of tobacco products to minors; coordination of Federal education and research activities; documenting of additives contained in tobacco products, determining those that represent a health risk, and ensuring public disclosure of such information in such a manner that assures protection of proprietary information; provision of information on the hazards of tobacco use and on strategies for research, education, prevention, and cessation of tobacco use to foreign countries; and carrying out programs established under the new title XXVII.

S. 1088 authorizes the Secretary, acting through the Director of CDC and in cooperation with nonfederal organizations, to carry out educational and research activities, including the preparation and distribution of materials, public service announcements, and educational campaigns; the provision of information to film makers, broadcast managers, and others regarding the role of the media in promoting tobacco use behavior; the conduct of research; the development of plans to provide outreach services to high risk groups and youth; and the conduct of reviews and research on the effectiveness of information contained on rotating warning labels.

Subtitle B of title XXVII as established by S. 1088 authorizes support for various programs of grants, contracts, and cooperative agreements, to be administered by the Center, for public information campaigns including public service announcements, paid educational messages for print media, public transit advertising, and broadcast media. Such campaigns would focus on discouraging youth and others from initiating tobacco use, encouraging those who use tobacco products to stop, and countering current messages in tobacco advertisements that promote tobacco use.

S. 1088 also authorizes model State leadership incentive grants for anti-tobacco use intervention. Such grants will be awarded to 10 to 20 States to assist them in meeting the costs of activities that will prevent the initial use of tobacco use by minors, will encourage the cessation of tobacco use among youth and others, and will implement and enforce a prohibition on the sale of tobacco products to minors.

S. 1088 authorizes education and demonstration grants, contracts, and cooperative agreements designed to decrease tobacco use in the workplace. Awards will be made to employer organizations, employer and employee consortia, and other organizations to help reduce the incidence of smoking and other tobacco use among workers with the highest prevalence of smoking.

S. 1088 as approved by the Committee establishes a program to inform the public of the dangers to human health presented by cigarette smoking. The program will include research, public information and educational programs, coordination of activities, and other related activities on the effects of cigarette smoking and of passive smoke on human health. The bill provides for the establishment of an Interagency Committee on Smoking and Health to carry out these activities.

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The bill also provides for the establishment of a program to inform the public of dangers to human health resulting from the use of smokeless tobacco products, including the development and dissemination of educational programs and materials and public service announcements, the conduct and support of research and the collection, analysis, and dissemination of information on smokeless tobacco and health. This effort may also include technical assistance and grants to States to assist in developing and disseminating programs, materials, and announcements, and in assisting States in establishing 18 as the minimum age for the purchase of smokeless tobacco. The bill also mandates reports from the Secretary to the Congress on activities related to smokeless tobacco, including information on health education efforts, smokeless tobacco use, and an evaluation of the health effects of such use and the identification of areas for further research, as well as recommendations for legislation and administrative action.

Subtitle C of title XXVII as authorized by S. 1008 prohibits a number of acts related to the manufacture of tobacco products, including a manufacturer's failure to comply with provisions of the bill related to tobacco additives; the introduction or delivery for introduction into interstate commerce of any tobacco product that is adulterated or misbranded; the adulteration or misbranding of a tobacco product in interstate commerce; the receipt of any tobacco product that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise; misuse or revealing of any method or process protected as a trade secret; misrepresentation of compliance with the provisions of title XV as authorized by the bill or any other Federal law or regulation; failure by a manufacturer to maintain copies of required materials; failure to make required reports, retain required records, and meet prescribed requirements under the title; and the sale of tobacco products to minors in a State designated as a model State under this title. The bill provides for the enforcement of these prohibitions through an Office of Regulatory Affairs and the U.S. district courts.

Chapter 2 of subtitle C of title XXVII as established by S. 1088 concerns additives, ingredients, and misbranded and adulterated tobacco products. This chapter requires tobacco manufacturers, importers, and packagers to provide for the Secretray lists of—all brands of tobacco products including the levels of tar, nicotine, and carbon monoxide for each brand; tobacco additives used in manufacture; and for each additive, the range of quantities used. If the Secretary determines that any tobacco additive significantly increases the risk to human health, the Secretary may require that levels of the additive be reduced or that it may be prohibited from use. The subtitle includes provisions for comment and judicial review for such determinations. The subtitle describes procedures for determining whether a tobacco product is misbranded or adulterated. The subtitle authorizes the Office of Regulatory Affairs to conduct examinations and investigations for the purposes of the title. Subtitle C, chapter 2, also provides that any product that contains nicotine but is not a tobacco product shall be considered to be a drug under the Federal Food, Drug, and Cosmetic Act.

The bill provides that nothing in this title, the Federal Cigarette Labeling and Advertising Act, the Comprehensive Smokeless To-

bacco Health Education Act of 1986, or the Comprehensive Smoking Education Act shall prohibit a tobacco product manufacturer from providing consumers with information concerning tobacco product constituents, tobacco smoke, and the adverse effects of tobacco use in addition to the information that they are required to provide under this title or the Acts listed above. It provides that nothing in this title, the Federal Cigarette Labeling and Advertising Act, or the Comprehensive Smoking Education Act shall be interpreted to relieve any person from liability at common law or under State statutory law to any other person.

The bill provides that nothing in this title, section 5 of the Federal Cigarette Labeling and Advertising Act, or the Comprehensive Smokeless Tobacco Health Education Act shall prevent any State or local government from enacting additional restrictions on the sale or distribution of tobacco products (including sales through vending machines and free samplings), on the placement or location of stationary outdoor advertising of tobacco products, or transit advertising of tobacco products under the control of State or local transit authorities, that is displayed solely with the geographic area governed by applicable State or local government, to the extent consistent with the First Amendment to the Constitution.

Subtitle E of title XXVII as established by S. 1088 authorizes grants and contracts to assist schools in the implementation of effective programs and policies to prevent tobacco use.

The bill amends the Drug-Free Schools and Communities Act authorized by the 1986 Anti-Drug Abuse Act to include references to education on tobacco use along with that Act's focus on alcohol and drug abuse education. It also authorizes a program of incentive grants to States to be awarded by the Secretary of Education to help in the establishment of smoke-free schools. The bill requires the Secretary of the Department of Health and Human Services (HHS), in consultation with the Secretary of Agriculture, to study and report to Congress on the use and effects of pesticides on tobacco and whether tolerances should be established for such use.

II. Background and Need for the Legislation

> Cigarette smoking is the chief preventable cause of death in our society. It is directly responsible for some 390,000 deaths each year in the United States, or more than 1 of every 6 deaths in our country. The number of Americans who die each year from diseases caused by smoking exceeds the number of Americans who died in all of World War II, and this toll is repeated year after year.

These are the opening words of Smoking and Health; A National Status Report, a report to the Congress from the U.S. Department of Health and Human Service published in February 1990. That same report documented that tobacco use costs the country $52 billion annually.

Barely a year later, it was reported that deaths from tobacco use had increased by 11 percent and significantly exceed the estimates of 1990 report. The current figure from the Centers for Disease Control is 434,000 deaths annually. This toll does include cancer deaths attributed to environmental tobacco smoke, but does not yet

include the cardiac deaths attributed to environmental tobacco smoke.

On May 10, 1990, the nation's newspapers reported on the preliminary results of a study by the Environmental Protection Agency on the risks of environmental tobacco smoke, which tentatively concluded that passive smoking causes 3,000 or more lung cancer deaths annually and a substantial number of respiratory illnesses and deaths among the children of smokers. Later that year, environmental tobacco smoke was deemed a Class A carcinogen by the Environmental Protection Agency and calculated to be responsible for a total of 16,000 cancer deaths per year. Subsequently, environmental tobacco smoke was also cited in a report prepared for the EPA, and published in a major cardiology research journal, as the cause of an estimated 37,000 cardiac deaths annually.

If cardiac deaths attributed to passive smoking of environmental tobacco smoke were included in the CDC's figures, the mortality rate from tobacco use would reach nearly 500,000 deaths per year. This would make tobacco the second leading cause of death from all sources, surpassed only by heart disease.

Other recent medical reports have cited tobacco products as a cause of cervical cancer in women, impotence in men under the age of 50, premature aging, and wrinkling of the skin. Actuarial analyses have revealed that the average male smoker loses 18 years of life expectancy.

On May 3, 1990, a Wall Street Journal headline—"With Help of Teens, Snuff Sales Revive"—led a story describing how, at the same time as cigarette sales are declining, consumption of moist snuff jumped 4.6 percent last year. The article went on to discuss how snuff products, "and the macho marketing pitches used to hawk them, hold an especially strong appeal for young people," The article cites a researcher, who says: "Kids start dipping at an earlier age than smoking. We're finding kids in elementary school using smokeless." The use of smokeless tobacco among adolescents has increased 300 percent since 1970.

The final report of the National Commission on Drug-Free Schools, released in September 1990, emphasized that tobacco is a gateway drug in the progression of young citizens toward the use of illegal drugs. It pointed out that tobacco is also one of the most widely used addictive substances among young Americans today, even though its purchase is illegal for most adolescents.

The report of the National Commission on Drug Free Schools also states: "Even though cigarette advertising has been banned from the electronic media since 1971, cigarettes are the most heavily advertised products on billboards and the second most heavily advertised products in magazines. Cigarette promotions are ubiquitous: cigarette ads appear on T-shirts, on scoreboards at sporting events, and on race cars; and free cigarette samples are distributed regularly at places where young people congregate."

In 1988, cigarette advertising and promotional expenditures in the U.S. reached an all-time high of $3.27 billion—a 26.9 increase over 1987 expenditures of $2.58 billion. During the same period, the consumer price index (all items) increased 4.1 percent. From 1975 to 1988, total cigarette advertising and promotional expenditures increased more than sixfold: when adjusted by the consumer price

index to constant 1975 dollars, cigarette advertising expenditures increased threefold. These data are from the April 27, 1990, issue of Morbidity and Mortality Weekly Report, a weekly periodical published by the Centers for Disease Control of the Department of Health and Human Services.

Much remains to be done to reduce the toll from the use of tobacco products. This struggle against preventable illness, disability, and death began nearly 30 years ago in 1962 when the Surgeon General of the Public Health Service appointed an advisory committee to study all published literature bearing on the relationship of smoking to health. After studying the problem for 18 months, the committee submitted the now-famous report to the Surgeon General on January 11, 1964. The report contained the unanimous judgment of the Surgeon General's Advisory Committee on Smoking and Health that: "Cigarette smoking is a health hazard of sufficient importance in the United States to warrant remedial action." The report specifically linked cigarette smoking with the incidence of and mortality from lung cancer, chronic bronchitis and emphysema, and cardiovascular diseases.

The 1964 report of the Surgeon General's Advisory Committee gave impetus to two-and-half decades of legislation, administrative actions, and related activity to educate and inform the American public about the dangers of cigarette and other tobacco use. The first of these was the 1965 Federal Cigarette Labeling and Advertising Act, P.L. 89-92, which required each cigarette package to bear the warning: "Caution: Cigarette Smoking May Be Hazardous to Your Health." In addition to this initial legislative activity, other actions were taken by the Federal Government and by the private sector. The Public Health Service developed and disseminated programs for the public as well as for health care professionals on smoking education and also established a national clearinghouse on smoking and health information. In addition, State and local health and education authorities and the major voluntary health organizations, launched vigorous smoking education programs.

The next landmark in the history of Federal action on tobacco use and health came in 1969 and 1970 when the 91st Congress considered and passed legislation relating to cigarette labeling, and advertising as well. The Public Health Cigarette Smoking Act of 1970, P.L. 91-222:

> Changed the cigarette package label wording to "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous to Your Health"; and Prohibited advertising of cigarettes on radio and television beginning January 2, 1971.

That legislation also preempted the states from the regulation of tobacco product advertising. Since that time, state and local jurisdictions have not been able to regulate the advertising of tobacco products in the way they regulate the advertising of other consumer products.

The 1970 Act also required annual reports to Congress on the health consequences of smoking—the Surgeon General's annual reports, which have in the years since made an important contribution to the body of scientific knowledge.

In August of 1970, the Federal Trade Commission issued a proposed rule to require cigarette manufacturers to disclose tar and nicotine content of cigarettes in their print advertising. The proceeding was suspended in December of that year when cigarette manufacturers agreed voluntarily to make the disclosures. By December 1971, all cigarette advertisements included tar and nicotine content information.

This information was never required to be on the packages of tobacco products. Tar and nicotine levels are sometimes revealed on the packages, but only for low tar and nicotine cigarettes.

In 1978, the Health Services and Centers Amendments, P.L. 95-626, directed the Secretary to conduct a "study of studies of (1) the relative health risks associated with smoking cigarettes of varying levels of tar, nicotine, and carbon monoxide; and (2) the health risks associated with smoking cigarettes containing any substance commonly added to commercially manufactured cigarettes." The 1981 report of the Surgeon General, subtitled "The Changing Cigarette," addressed the issue of the potential hazards of substances added to cigarettes. One of the report's basic findings questioned the use of additives—"whether the new cigarettes being produced today introduced new risks through their design, filtering mechanisms, tobacco ingredients, or additives," and noted that it was not possible "to assess the relative risks of cigarette additives because information was not available from manufacturers as to what these additives are." The 1981 report recommended that "flavoring agents and additives should be studied * * * for carcinogenicity and toxicity before their commercial use is permitted, and the results of such studies should be made available."

Also in 1981 the Federal Trade Commission (FTC) published a staff report on an investigation of cigarette advertising which found that past efforts of the Commission, the Congress, and other Government agencies and private organizations had had a significant impact in informing the public on the hazards of smoking, but that problems still existed. It found, for instance, that while most Americans were aware generally of the dangers of smoking, some consumers did not have enough information about the health risks of smoking to know how dangerous smoking is, i.e., what is the nature and extent of the health risks of smoking. The FTC report indicated that many Americans still did not know what specific diseases were related to smoking. For example, the report cited polls showing that over 30 percent of the public was unaware of the relationship between smoking and heart disease. Nearly 50 percent of all women did not know that smoking during pregnancy increases the risk of stillbirth and miscarriage. Even for lung cancer, which was the first and is probably the best-known, disease associated with smoking, it was clear that gaps still existed in consumer knowledge about smoking—20 percent of those polled did not know that smoking causes cancer.

The 25th anniversary report of the Surgeon General, "Reducing the Health consequences of Smoking: 25 Years of Progress' (1989), and the annual "High School Senior Survey" published by the Department of Health and Human Services (1987), revealed that knowledge regarding the hazards of tobacco use is still not as widespread as might be assumed. Approximately 32 percent of women

of child bearing age don't know that smoking causes still births; 25% don't realize it causes miscarriages and premature births. About 29 percent of smokers don't know that smoking causes heart disease, and 28% of smokers disagree with the statement: "most deaths from lung cancer are caused by cigarette smoking." A full 34 percent of high school seniors don't believe smoking a pack a day causes great risk of harm.

The Comprehensive Smoking Education Act of 1984, P.L. 98-474, stepped up the national campaign to increase the availability of information on the health consequences of smoking. It gave the Secretary broad authority in the areas of research, education, and information to inform the public of any dangers to human health presented by cigarette smoking. It authorized the establishment of an Interagency Committee on Smoking and Health to coordinate research and educational programs and activities and establish and maintain liaison with private entities, other Federal agencies, and State and local agencies concerning activities relating to smoking and health.

The 1984 legislation also changed the system of warning labels on cigarette packages and in cigarette advertising, instituting a rotating system utilizing four different specific information labels:

Surgeon General's Warning: Smoking Causes Lung Cancer, Heart Disease, Emphysema, and May Complicate Pregnancy;

Surgeon General's Warning: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health;

Surgeon General's Warning: Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, and Low Birth Weight;

Surgeon General's Warning: Cigarette Smoke Contains Carbon Monoxide.

The 1984 Comprehensive Smoking Education Act also included provisions to require cigarette manufacturers, packagers, and importers to provide the Secretary with a list of ingredients added to tobacco (additives) in the manufacture of cigarettes and to direct the Secretary to report to Congress on research on the health effects of ingredients, and on information pertaining to any such ingredient (additive) which poses a health risk to smokers.

The requirement for disclosure to the Secretary was a requirement for a composite list of all additives to all brand names with no specific listings for any specific brand, or company, and no information about quantities. This information is given to the Secretary but is not released to the public because it is confidential. The exact combination of additives in any brand or used by any company, or the quantity of additives, is not reported and is unknown. Thus, the information necessary to determine the health implications of additives is not really available to the Secretary.

The Comprehensive Smokeless Tobacco Health Education Act of 1986, P.L. 99-252, was the response of the Congress to its concern about reported increases in the use of smokeless tobacco products, particularly among young men. The Act authorized the establishment of a public education program about the dangers to health from the use of smokeless tobacco. It also required three warning labels to be used on packages and in advertising for smokeless tobacco products:

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Warning: This Product May Cause Mouth Cancer;

Warning: This Product May Cause Gum Disease and Tooth Loss; and

Warning: This Product is Not a Safe Alternative to Cigarettes.

The 1986 legislation also instituted ingredient reporting requirements for smokeless products similar to those established in the 1984 Comprehensive Smoking Education Act for cigarettes. The information required did not identify additives by brand or company or specify quantity and has, therefore, not permitted the Department of Health and Human Services to draw any conclusions about the health implications of these additives.

Despite all that Congress, the Department of HHS, State and local agencies, and national organizations have done to spread the word about the hazards of tobacco use, it remains public health enemy number 1 in America today. As noted above, tobacco use is the leading preventable cause of death. Smoking causes 87 percent of lung cancer and 33 percent of all cancers. It causes 40 percent of health disease, 18 percent of strokes, and 10 percent of infant mortality.

The ominous part of the tobacco use problem is that it starts so early and is so difficult to stop. An estimated 90 percent of all smokers begin between the ages of 15 and 19, 25 percent between 12 and 14, and 25 percent before age 12. By high school graduation, 53 percent of students who smoke half a pack a day have tried to stop and found that they couldn't. Adult smokers have just as much difficulty quitting once they have become addicted. Eighty percent of current smokers have expressed a desire to stop—but two-thirds have made a serious effort and failed.

Cigarettes are not the only tobacco product in popular use; many young people, boys in particular, have taken to the use of smokeless tobacco products in the mistaken belief that they are not as hazardous to health as cigarettes, and have helped boost the sales of such products, as noted above.

The success of tobacco product advertising in the face of the facts is undeniable. Cigarettes remain one of the msot heavily advertised products in the print media. In 1988, FTC data indicate that cigarettes were the most heavily advertised product in outdoor media, the second most heavily advertised product in magazines (after passenger cars), and the sixth most heavily advertised product in newspapers. When advertising expenditures for these three media are combined, cigarettes were the second most heavily advertised product overall (after passenger cars.)

Tobacco product advertising and promotion may increase cigarette consumption by (1) encouraging children and adolescents to experiment with and initiate regular use of cigarettes and other tobacco products; (2) deterring current smokers and other tobacco product users from quitting; (3) prompting former smokers to start again; and (4) increasing smokers' daily cigarette consumption by serving as an external cue to smoke. The ubiquity of advertising for cigarettes and other tobacco products may contribute to the perception that smoking and other tobacco use is less hazardous, more prevalent, and more socially acceptable than it is. Advertising campaigns for cigarettes and other tobacco products increasing-

ly focus on groups that account for a growing percentge of the smoking and tobacco use population—women, minorities, and blue-collar workers.

III. Text of the Bill as Reported

A BILL To amend the Public Health Service Act to establish a center for tobacco products, to inform the public concerning the hazards of tobacco use, to provide for disclosure of additives to such products, and to require that information be provided concerning such products to the public, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Tobacco Product Education and Health Protection Act of 1991".

SEC. 2. FINDINGS AND PURPOSES.

(a) Findings.—Congress finds that—

(1) despite a steady decline in tobacco consumption, 52,000,000 Americans still use tobacco products annually;

(2) tobacco use causes over 434,000 deaths each year in the United States, the equivalent of over 1,000 deaths a day;

(3) tobacco use is the most important cause of death and illness in the United States today, causing one sixth of all deaths annually;

(4) in 1985, the private and public sectors in the United States spent approximately $22,000,000,000 on smoking-related illnesses and absorbed $43,000,000,000 in economic losses from such illnesses;

(5) over 50 percent of all smokers begin using tobacco by the age of 14, and 90 percent of all smokers begin using tobacco before the age of 20;

(6) tobacco products contain nicotine and are addictive;

(7) most young people initiate tobacco use and become addicted before they are sufficiently informed or mature enough to make an informed choice concerning such use;

(8) according to the National Commission on Drug Free Schools, the tobacco industry contributes significantly to experimentation with tobacco and the initiation of regular tobacco use by children and young adults through its advertising and promotion practices;

(9) in 1988 the tobacco industry spent $3,250,000,000 on the advertising and promotion of tobacco products, ranking such products among the most heavily advertised and promoted products in the United States;

(10) the tobacco industry claims that the purpose of advertising is to influence consumer brand selection, but only 10 percent of tobacco users switch brands each year;

(11) convincing evidence demonstrates that tobacco advertising creates market expansion and retention;

(12) the tobacco industry must attract 6,000 new smokers daily to replace those who stop smoking or who die of smoking-related diseases and other causes, or who quit;

(13) tobacco product advertising and promotion appeal to the youth market through advertisements that suggest a strong association between smoking and physical fitness, attractiveness, success, adventure, and independence, and, according to the National Commission on Drug Free Schools, these advertisements have an influence on minors, who are more vulnerable to image-based advertising;

(14) serious gaps in knowledge about the harmful effects of the use of tobacco products persist in both minors and the adult population, with surveys showing that large numbers of citizens are unaware that smoking causes lung cancer, heart disease and still births in pregnancy;

(15) education is effective in preventing and halting the use of tobacco products;

(16) the proportion of smokers among the most educated adults is less than half that among the least educated adults;

(17) the highest percentage of smoking is among those individuals with the least amount of education, including young citizens, blue-collar workers, high school drop-outs and minorities;

(18) the total resources of the major voluntary organizations that sponsor educational activities on smoking have never exceeded 2 percent of tobacco industry expenditures for the promotion of tobacco;

(19) children and teenagers should be informed about the dangers of smoking and be discouraged from initiating the use of tobacco products;

(20) the American public and groups with high prevalences of tobacco use should be informed about the dangers of tobacco products;

(21) although most States prohibit the sale of tobacco products to minors, such laws are not uniformly enforced;

(22) in recent years, there have been efforts in some States to improve the enforcement of existing laws which prohibit the sale of tobacco products to minors;

(23) minors who live near the borders of States referred to in paragraph (22) still may cross into other States to obtain tobacco products;

(24) cooperative Federal-State efforts will encourage more effective action to limit the sale of tobacco products to minors;

(25) no Federal law currently requires public disclosure of the numerous additives in tobacco products.

(b) Purposes.—It is the purpose of this Act to—

(1) help educate citizens to prevent initiation and encourage cessation of tobacco use;

(2) inform the public about the harmful effects of tobacco products;

(3) provide that segment of the public that has the greatest prevalence of tobacco use, or is subject to the greatest risk from tobacco use, with image based educational messages that present accurate information about the hazards of tobacco use as an alternative to the misleading images and information contained in industry advertising;

(4) support State efforts to improve educational programs for the prevention and cessation of tobacco use;

(5) support State efforts to strengthen laws limiting the sale of tobacco products to minors;

(6) provide for the determination of the risk to individual health of additives to tobacco products and establish Federal regulatory authority over such additives; and

(7) ensure the disclosure of accurate information to the public.

SEC. 2. TOBACCO HEALTH AND EDUCATION PROGRAMS.

(a) REQUIREMENT.—The Public Health Service Act is amended—

(1) by redesignating title XXVII (42 U.S.C. 300cc et seq.) as title XXVIII; and

(2) by inserting after title XXVI the following new title:

"TITLE XXVII—TOBACCO HEALTH AND EDUCATION PROGRAMS

"Subtitle A—Center on Tobacco and Health

"SEC. 2701. ESTABLISHMENT OF CENTER.

"(a) IN GENERAL.—The Secretary shall establish a Center on Tobacco and Health within the Centers for Disease Control.

"(b) FUNCTIONS.—The Secretary, acting through the Director of the Centers for Disease Control, shall—

"(1) educate the public concerning the health consequences of using tobacco products, provide outreach services to youth, and promote cessation of tobacco use through the provision of technical and material assistance to States, workplaces, and the media;

"(2) support research efforts concerning patterns of tobacco use and cessation;

"(3) provide assistance to States to enhance their efforts to enforce existing State laws concerning the sale of tobacco products to minors within the State;

"(4) coordinate the education and research activities of the Federal Government with regard to tobacco products;

"(5) document the additives that are contained in tobacco products, determine the additives that represent a health risk, restrict the use of tobacco additives that represent a significant additional health risk to the public, and ensure the disclosure of such information to the public in a manner that assures the protection of proprietary information;

"(6) provide information about the hazards of tobacco use and about strategies for research, education, prevention, and cessation of tobacco use to foreign countries where tobacco use or mortality from tobacco use is on the rise; and

"(7) carry out the programs established under this title.

"(c) CONTRACTS.—The Secretary, acting through the Director of the Centers for Disease Control, may enter into contracts and cooperative agreements with Federal agencies within and outside of the Public Health Service in the exercise of the functions of the Secretary under this title.

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"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $25,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 and 1994.

"SEC. 2702. EDUCATIONAL AND RESEARCH ACTIVITIES.

"The Secretary, acting through the Director of the Centers for Disease Control and in cooperation with non-Federal entities, shall carry out educational and research activities that shall include—

"(1) the preparation and distribution of materials to educate the public concerning the health effects of using tobacco products;

"(2) the preparation of public service announcements and the preparation and implementation of educational campaigns (that include paid advertising) to inform specific populations, including youth and the general population, of the health effects of using tobacco products and the opportunities for prevention and cessation of such use;

"(3) the provision of information to film makers, broadcast media managers, and others regarding the role of the media in promoting tobacco use;

"(4) the conduct of research on patterns of tobacco use, initiation, and cessation, and effective methods for disseminating such information;

"(5) the development of plans to effectively provide outreach services to high risk groups and youth with such information; and

"(6) the conduct of reviews of the effectiveness of information required to be contained in rotating warning labels on tobacco product packages and the undertaking of research to establish how to improve the effectiveness of such labels.

"Subtitle B—Anti-Smoking Programs

"CHAPTER 1—PUBLIC INFORMATION CAMPAIGNS

"SEC. 2711. GRANTS FOR PUBLIC INFORMATION CAMPAIGNS.

"(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control, shall make grants to public or nonprofit private entities, or enter into contracts or cooperative agreements with private entities, to conduct public information campaigns concerning the use of tobacco products.

"(b) ACTIVITIES.—Assistance under this chapter shall be used for the development of a public information campaign that may include public service announcements, paid educational messages for print media, public transit advertising, electronic broadcast media, and any other mode of conveying information concerning tobacco products that the Secretary considers appropriate. Such activities shall—

"(1) focus on seeking to discourage the initiation of use of tobacco products by youth and nonusers;

"(2) encourage cessation of tobacco use by those who currently use tobacco products; and

"(3) counter the messages contained in tobacco advertisements that promote tobacco use.

Such activities shall focus on one or more of the specific groups described in subsection (c)(1).

"(c) CRITERIA.—The Secretary, acting through the Director of the Centers for Disease Control, shall publish the criteria used for awarding grants under this chapter in the Federal Register. Such criteria shall ensure that the applicant—

"(1) will conduct activities that educate one or more communities or groups with high prevalences of tobacco use and high health risks from tobacco use, specifically youth, school dropouts, pregnant women, minorities, blue collar workers, and low income individuals;

"(2) has a record of high quality campaigns of a comparable type; and

"(3) has a record of high quality campaigns that educate the population groups specified in paragraph (1).

"(d) PREFERENCE.—

"(1) IN GENERAL.—In awarding grants, contracts, or agreements under this chapter, the Secretary shall give a preference to those applicants that will conduct activities that will most likely encompass an audience that includes several of the groups identified in subsection (c)(1).

"(2) COMPREHENSIVENESS.—In awarding grants, contracts, or agreements under this chapter, the Secretary shall attempt to distribute such grants, contracts, or agreements so that all groups identified in subsection (c)(1) are reached with diverse media. Single grants, contracts, or agreements shall not require that all groups are reached or that all media must be used.

"SEC. 2712. GRANT APPLICATION.

"(a) REQUIREMENT.—No grant, contract, or cooperative agreement shall be made or entered into under this chapter unless an application that meets the requirements of subsection (b) has been submitted to, and approved by, the Secretary.

"(b) CONTENTS.—An application submitted under subsection (a) shall provide such agreements, assurances, and information, be in such form and submitted in such manner as the Secretary shall prescribe through notice in the Federal Register. Such application shall contain—

"(1) a complete description of the plan of the applicant for the development of a public information campaign, including—

"(A) an identification of the specific audiences that shall be educated by the campaign, including one or more communities or groups with high prevalences of tobacco use and high health risks from tobacco use, such as youth, school dropouts, minorities, blue collar workers, pregnant women, and low income individuals;

"(B) an identification of the media to be used in the campaign and the geographic distribution of the campaign;

"(C) a description of plans to test market the campaign with a relevant population group and in a relevant geographic area; and

"(D) an assurance that effectiveness criteria will be implemented prior to the completion of the final plan that shall include an evaluation component to measure the overall effectiveness of the campaign; and

"(2) a complete description of the kind, amount, distribution, and timing of informational messages and an assurance that the applicant will work with any media organizations or other groups with which such messages are placed to ensure that such organizations or groups will not lower the current frequency of public service announcements.

"SEC. 2713. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to make grants or enter into contracts or agreements under this chapter, $50,000,000 for fiscal year 1992, and such sums as may be necessary in each of the fiscal years 1993 and 1994.

"CHAPTER 2—MODEL STATE LEADERSHIP INCENTIVE GRANTS FOR ANTI-TOBACCO USE INTERVENTION

"SEC. 2715. GRANT PROGRAM.

"(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control, shall designate not less than 10 nor more than 20 States as model States under subsection (b), and shall make grants to each designated model State to assist the State in meeting the costs of improving State leadership concerning activities that—

"(1) will prevent the initial use of tobacco products by minors;

"(2) will encourage the cessation of the use of tobacco products among the youth and other residents of the State, with particular attention directed towards those individuals and groups who are at high risk and suffer high prevalences of tobacco use, including school dropouts, minorities, low-income individuals, pregnant women and blue collar workers; and

"(3) will implement and enforce a prohibition on the sale of tobacco products to minors.

"(b) CRITERIA FOR MODEL STATE DESIGNATION.—To be designated as a model State under subsection (a), a State shall—

"(1) have in effect a law that prohibits the sale of tobacco products to individuals under the age of 18;

"(2) seek to improve the enforcement of the law referred to in paragraph (1);

"(3) have in effect a law or regulation that is intended to reduce the use of, or access to, cigarette vending machines by minors who are under the age of 18;

"(4) seek to improve the enforcement of the law or regulation referred to in paragraph (3); and

"(5) have in effect, or seek to establish, a law or regulation that prohibits the provision of free samples of tobacco products.

"SEC. 2716. APPLICATIONS.

"To be eligible to be designated as a model State under section 2715 and receive a grant, a State shall prepare and submit to the Secretary an application that—

"(1) includes a designation of a lead agency within the State that will work in conjunction with the Center, and contain assurances that such agency—

"(A) has experience in matters that affect the public health;

"(B) has expertise regarding the health effects and use of tobacco products;

"(C) provides direct services for smoking cessation or referrals for such services;

"(D) administers activities intended to prevent the initiation of use of tobacco products by minors who are under the age of 18, and by other individuals;

"(E) will have a lead office or division that will have the experience and expertise described in subparagraphs (A) and (B) and will be chiefly responsible for the functions described in subparagraphs (C) and (D); and

"(F) will provide personnel sufficient to staff the lead office or division;

"(2) provides assurances that as part of a program to improve State enforcement of laws prohibiting the sale of tobacco products to minors the State, will—

"(A) establish a mechanism for the reporting of citizen or other complaints to the office or division referred to in paragraph (1)(E) concerning retail establishments that sell tobacco products to minors in violation of State law;

"(B) establish a program to make the public aware of the office or division referred to in paragraph (1)(E);

"(C) establish a procedure by which the State may make a finding or a presumption that a retail establishment has a pattern or practice of selling tobacco products to minors in violation of State law, which includes—

"(i) the provision of reasonable notice to the retail establishment and the owner or operator thereof; and

"(ii) the provision of an opportunity to respond through a formal or informal hearing where according to State guidelines there is cause for such hearing;

"(D) establish a procedure for the lead State agency to report periodically to the Center regarding the implementation of subparagraphs (A) through (C); and

"(E) establish a procedure to request the assistance of the Office of Regulatory Affairs established under section 2741(b) to enforce State laws prohibiting the sale of tobacco products to minors;

"(3) includes a complete description of the type of programs that will be established or assisted by or through the State, and a statement of goals, objectives, and timetables of such programs or activities that are consistent with the purposes of section 2715;

"(4) specifies how the State will meet the criteria described in section 2717;

"(5) includes copies of the State laws and regulations described in paragraphs (1) and (3) of section 2715(b); and

"(6) is in such form, is submitted in such manner, and contains such information as the Secretary shall require, including such other information as the Secretary may by regulation prescribe.

"SEC. 2717. GRANT CRITERIA.

"The Secretary, acting through the Director of the Centers for Disease Control, shall establish criteria for awarding grants under this chapter. Such criteria shall include requirements that the State must provide—

"(1) evidence that the State has made efforts to discourage tobacco use among the youth residing in such State;

"(2) evidence of the need of the State for the assistance that is requested, as reflected in the prevalence of the use of tobacco within the State, especially among the populations that are described under section 2715(a)(2), and assurances that the State intends to concentrate its efforts on such populations; and

"(3) evidence of the need of the State for the assistance that is requested, as reflected in the necessity for the development of statewide expertise in the planning of, and implementation of anti-tobacco use interventions;

"(4) evidence of cooperative arrangements that the State has, or will enter into, with other entities that will participate in the activities established or assisted under the grant.

"SEC. 2718. ASSISTANCE TO MODEL STATES.

"The Secretary, acting through the Director of the Centers for Disease Control, shall provide to designated model States, on request—

"(1) model printed materials for distribution to retail establishments concerning the health hazards and illegality of the sale of tobacco products to minors;

"(2) support for, and assistance in, the planning of meetings, conferences, and conventions to educate retail establishments concerning the health hazards associated with tobacco products, the addictive nature of tobacco products, and State laws that prohibit the sale of tobacco products to minors;

"(3) technical assistance in the development of reporting systems to identify specific retail establishments and retail chains that consistently sell tobacco products to minors in violation of State law;

"(4) assistance in the development of notification systems to make specific retail establishments aware that such establishments are acting consistently in violation of State law;

"(5) model notices to be distributed to retail establishments concerning the awareness of State authorities and of the Center of the continued sale by the establishment of tobacco products to minors in violation of State law; and

"(6) information on the procedures to be followed by the State to obtain assistance from the Office of Regulatory Affairs to enforce State laws prohibiting the sale of tobacco products to minors.

"SEC. 2719. AUTHORIZATION OF APPROPRIATIONS.

"(a) IN GENERAL.—There are authorized to be appropriated to make grants under this chapter, $25,000,000 for fiscal year 1992,

and such sums as may be necessary for each of the fiscal years 1993 and 1994.

"(b) DISTRIBUTION OF FUNDS.—Funds shall be distributed under this chapter so that no State designated by the Secretary as a model State shall receive more than $2,000,000 for each fiscal year under this section.

"CHAPTER 3—EDUCATION TO DECREASE TOBACCO USE IN THE WORKPLACE

"SEC. 2721. PURPOSE.

"The Secretary, acting through the Centers for Disease Control, shall make grants to public and nonprofit entities and enter into contracts and cooperative agreements with private entities (including employer organizations and employer and employee consortia) for educational activities to reduce the incidence of tobacco use among workers with high prevalences of tobacco use. Such grants, contracts, or cooperative agreements shall be used for meeting all or part of the costs of activities that will prevent the initiation, and encourage the cessation, of the use of tobacco products among workers and their families. In making grants and entering into contracts and cooperative agreements, the Secretary shall give priority to applicants that will educate groups with the highest prevalences of tobacco use.

"SEC. 2722. ACTIVITIES AND CRITERIA.

"(a) ACTIVITIES.—Assistance provided under this chapter shall be used for—

"(1) education to promote the cessation of tobacco use among workers who have high prevalences of tobacco use;

"(2) information and activities to provide family members of workers with education concerning the health consequences of tobacco use;

"(3) training and education to develop the expertise of a health educator or other personnel who will perform the activities described in this subsection for workers and their families; and

"(4) the development of audio, visual, or print materials that will facilitate any of the activities described in this subsection when such appropriate audio, visual, or print materials are not otherwise available.

"(b) CRITERIA.—The Secretary, acting through the Director of the Centers for Disease Control, shall establish criteria for the awarding of grants under this chapter that shall include requirements that the applicant provide to the Secretary, in the application required under section 2723—

"(1) evidence of—

"(A) the potential for success of the proposed plan of the applicant; and

"(B) the existence of any cooperative arrangements with other entities that will participate in the proposed plan;

"(2) an agreement that activities to be conducted under the grant will be implemented with the cooperation of the employer; and

"(3) any other information as the Secretary shall specify.

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"SEC. 2723. APPLICATION.

"(a) REQUIREMENT.—No grant, contract or cooperative agreement shall be made under this chapter unless an application therefor has been submitted to, and approved by, the Secretary.

"(b) CONTENTS.—An application submitted under subsection (a) shall be in such form and submitted in such manner as the Secretary shall prescribe through publication of a notice in the Federal Register. Such application shall contain—

"(1) a complete description of the type of educational activities that the applicant intends to carry out with assistance provided under this chapter, including—

"(A) a description of the activities that are designed to establish an ongoing anti-tobacco program that may include working cooperatively with existing anti-tobacco programs in the community or State; and

"(B) an assurance that activities conducted under subparagraph (A) will demonstrate a concentration of effort to change tobacco use behavior in those groups identified in section 2721 and will include one or more of the activities described in section 2722;

"(2) an assurance by the applicant of its ongoing commitments to support the anti-tobacco use activities after the period of the grant, contract, or cooperative agreement has expired;

"(3) a description of the manner in which the applicant will meet the criteria specified in section 2722; and

"(4) such other information as the Secretary may by regulation prescribe.

"SEC. 2724. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to make grants, contracts, or agreements under this chapter, $5,000,000 for each of the fiscal years 1992 through 1994.

"CHAPTER 4—INFORMATION REGARDING CIGARETTE SMOKING

"SEC. 2726. DEFINITIONS.

"As used in this chapter:

"(1) COMMITTEE.—The term 'Committee' means the committee established under section 2727(c), or the committee established under section 3(b) of the Comprehensive Smoking Education Act (15 U.S.C. 1341(b)) as such section existed before the date of enactment of this section.

"(2) UNITED STATES.—The term 'United States', when used in a geographical sense, includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and the installations of the Armed Forces.

"SEC. 2727. SMOKING RESEARCH, EDUCATION, AND INFORMATION IN GENERAL.

"(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish and carry out a program to inform the public of the dangers to human health presented by cigarette smoking.

"(b) ADMINISTRATION OF PROGRAM.—In carrying out the program established under subsection (a), the Secretary shall—

"(1) conduct and support research on the effects of cigarette smoking and of passive smoke on human health and develop materials for informing the public of such effects;

"(2) coordinate all research and educational programs and other activities within the Department of Health and Human Services that relate to the effect of cigarette smoking and passive smoke on human health and coordinate, through the Committee, with similar activities of other Federal agencies and of private agencies;

"(3) establish and maintain liaison with appropriate private entities, other Federal agencies, and State and local public agencies concerning activities relating to the effect of cigarette smoking and passive smoke on human health;

"(4) collect, analyze, and disseminate (through publications, bibliographies, and otherwise) information, studies, and other data relating to the effect of cigarette smoking and passive smoke on human health, and develop standards, criteria, and methodologies to improve information programs related to smoking and health;

"(5) compile and make available information on State and local laws relating to the use and consumption of cigarettes;

"(6) establish an outreach program to inform individuals under the age of 18 about the health consequences of smoking; and

"(7) undertake any other additional information and research activities that the Secretary determines necessary and appropriate to carry out this section.

"(c) COMMITTEE.—

"(1) ESTABLISHMENT.—To carry out the activities described in paragraphs (2) and (3) of subsection (b), the Secretary shall establish an Interagency Committee on Smoking and Health.

"(2) COMPOSITION.—The Committee established under paragraph (1) shall be composed of—

"(A) the Director of the Center;

"(B) members appointed by the Secretary from appropriate institutes and agencies of the Department, that may include the National Cancer Institute, the National Heart, Lung, and Blood Institute, the National Institute of Child Health and Human Development, the National Institute on Drug Abuse, Health Resources and Services Administration, and the Centers for Disease Control;

"(C) one member appointed from each of the Federal Trade Commission, the Department of Education, the Department of Labor, and any other Federal agency designated by the Secretary, the appointment of whom shall be made by the head of the entity from which the member is appointed; and

"(D) five members appointed by the Secretary from physicians and scientists who represent private entities involved in informing the public about the health effects of tobacco use and passive smoking.

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"(3) CHAIRPERSON.—The Secretary shall designate the chairperson of the Committee established under paragraph (1).

"(4) EXPENSES.—While away from their homes or regular places of business in the performance of services for the Committee established under paragraph (1), members of such Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the manner provided by sections 5702 and 5703 of title 5 of the United States Code.

"(5) OTHER INFORMATION.—The Secretary shall make available to the Committee established under paragraph (1) such staff, information, and other assistance as it may require to carry out its activities effectively.

"(d) REPORT.—Not later than January 1, 1991, and biennially thereafter, the Secretary shall prepare and submit, to the appropriate Committees of Congress, a report that shall contain—

"(1) an overview and assessment of Federal activities undertaken to inform the public of the health consequences of smoking and passive smoke and the extent of public knowledge of such consequences;

"(2) a description of the activities of the Secretary and the Committee under subsection (a);

"(3) information regarding the activities of the private sector taken in to deal with the effects of smoking on health; and

"(4) such recommendations as the Secretary may consider appropriate.

"SEC. 2728. PUBLIC EDUCATION REGARDING SMOKELESS TOBACCO.

"(a) DEVELOPMENT.—

"(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control, shall establish and carry out a program to inform the public of dangers to human health resulting from the use of smokeless tobacco products.

"(2) DUTIES OF SECRETARY.—In carrying out the program established under paragraph (1) the Secretary, acting through the Director of the Centers for Disease Control, shall—

"(A) develop educational programs and materials and public service announcements respecting the dangers to human health from the use of smokeless tobacco;

"(B) make such programs, materials, and announcements available to States, local governments, school systems, the media, and such other entities as the Secretary determines appropriate to further the purposes of this section;

"(C) conduct and support research concerning the effects of the use of smokeless tobacco on health; and

"(D) collect, analyze, and disseminate information and studies on smokeless tobacco and health.

"(3) CONSULTATION.—In developing programs, materials, and announcements under paragraph (2), the Secretary shall consult with the Secretary of Education, medical and public health entities, consumer groups, representatives of manufacturers of smokeless tobacco products, and other appropriate entities.

"(b) ASSISTANCE.—The Secretary may provide technical assistance and make grants to States—

"(1) to assist in the development of educational programs and materials and public service announcements respecting the dangers to human health from the use of smokeless tobacco;

"(2) to assist in the distribution of such programs, materials, and announcements through the States; and

"(3) to assist States in enacting laws and regulations to establish 18 as the minimum age for the purchase of smokeless tobacco.

"SEC. 2729. REPORTS.

"Not later than January 1, 1991, and biennially thereafter, the Secretary shall prepare and submit, to the appropriate Committees of Congress, a report containing—

"(1) a description of the effects of health education efforts on the use of smokeless tobacco products;

"(2) a description of the use by the public of smokeless tobacco products;

"(3) an evaluation of the health effects of smokeless tobacco products and the identification of areas appropriate for further research; and

"(4) such recommendations for legislation and administrative action as the Secretary considers appropriate.

"CHAPTER 5—GENERAL PROVISIONS

"SEC. 2735. ADMINISTRATIVE PROVISIONS.

"(a) AMOUNT AND METHOD OF PAYMENT.—

"(1) AMOUNT.—The Secretary shall determine the amount of a grant, contract, or agreement awarded under this subtitle.

"(2) METHOD.—Payments under grants, contracts, or cooperative agreements awarded under this subtitle may be made in advance, on the basis of estimates, or by way of reimbursement, with necessary adjustments because of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary determines necessary to carry out the purposes of such grants, contracts, or agreements.

"(b) MAINTENANCE OF EFFORT.—No grant, contract, or agreement shall be made under this subtitle unless the Secretary determines that there is satisfactory assurance that Federal funds made available under such a grant, contract, or agreement for any period will be so used as to supplement and, to the extent practical, increase the level of State, local, and other non-Federal funds that would, in the absence of such Federal funds, be made available for the program for which the grant, contract, or agreement is to be made and will in no event supplant such State, local and other non-Federal funds.

"(c) SUPPLIES, EQUIPMENT, AND EMPLOYEE DETAIL.—

"(1) IN GENERAL.—The Secretary, at the request of a recipient of a grant, contract, or cooperative agreement under this subtitle, may reduce the amount of such a grant, contract, or agreement by—

"(A) the fair market value of any supplies or equipment furnished to the recipient by the Secretary;

"(B) the amount of pay, allowances, and travel expenses incurred by any officer or employee of the Federal government when such officer or employee has been detailed to the recipient; and

"(C) the amount of any other costs incurred in connection with the detail of an officer or employee as described in subparagraph (B);

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience, and at the request, of such recipient and for the purpose of carrying out activities under the grant, contract, or agreement.

"(2) USE OF AMOUNT OF REDUCTION.—The amount by which any grant, contract, or agreement awarded under this subtitle is reduced under this subsection shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant, contract, or agreement is based, and such amount shall be considered as part of the grant, contract, or agreement that has been paid to the recipient.

"(d) RECORDS.—Each recipient of a grant, contract, or agreement under this subtitle shall keep such records as the Secretary determines appropriate, including records that fully disclose—

"(1) the amount and disposition by such recipient of the proceeds of such grant contract, or agreement;

"(2) the total cost of the activity for which such grant, contract, or agreement was made;

"(3) the amount of the cost of the activity for which such grant, contract, or agreement was made that has been received from other sources; and

"(4) such other records as will facilitate an effective audit.

"(e) AUDIT AND EXAMINATION OF RECORDS.—The Secretary and the Comptroller General of the United States shall have access to any books, documents, papers, and records of the recipient of a grant, contract, or cooperative agreement under this subtitle, for the purpose of conducting audits and examinations of such recipient that are pertinent to such grant, contract, or agreement.

"Subtitle C—Prohibited Acts, Enforcement, and Additives

"CHAPTER 1—PROHIBITED ACTS AND ENFORCEMENT

"SEC. 2741. PROHIBITED ACTS.

"(a) IN GENERAL.—The following acts and the causing thereof are prohibited:

"(1) COMPLIANCE.—The failure of a manufacturer of a tobacco product to comply with section 2751.

"(2) DELIVERY.—The introduction or delivery for introduction into interstate commerce of any tobacco product that is adulterated or misbranded.

"(3) ADULTERATION OR MISBRANDING OF PRODUCT IN COMMERCE.—The adulteration or misbranding of any tobacco product in interstate commerce.

"(4) RECEIPT.—The receipt in interstate commerce of any tobacco product that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

"(5) TRADE SECRET.—The using by any person to the advantage of such person, or revealing, other than to the Secretary or officers or employees of the Department, or to the courts when relevant in any judicial proceeding under this title, any information acquired under authority of this title concerning any method or process that as a trade secret is entitled to protection. This paragraph shall not be construed to prohibit disclosure of information to Congress.

"(6) MISREPRESENTATION OF APPROVAL.—The representation or suggestion that an approval of any tobacco product is in effect under this title such representation or suggestion being false.

"(7) COPIES OF MATERIAL.—The failure of the manufacturer of a tobacco product to maintain for transmittal, or to transmit, to any individual who makes a written request for information as to such product, true and correct copies of all printed matter that are required to be included in or on any package of a tobacco product.

"(8) REPORTS, RECORDS, REQUIREMENTS.—The failure to make reports required, the failure to retain records required, or the failure to meet requirements prescribed, under this title.

"(9) SALE TO MINORS.—The sale of tobacco products to minors in a State designated as a model State under section 2715.

"(b) OFFICE OF REGULATORY AFFAIRS.—To carry out this subtitle, the Secretary shall establish within the Public Health Service, or designate an existing entity within such Service as, an Office of Regulatory Affairs. Such office shall coordinate its work with other offices and agencies of the Federal Government.

"SEC. 2742. ENFORCEMENT.

"(a) IN GENERAL.—Any person who violates the provisions of this subtitle shall be subject to the penalties described in subsection (d).

"(b) DENIAL OF DELIVERY.—With respect to a State that has been designated as a model State under section 2715, any retail establishment for which the State makes a finding that such retail establishment has been engaged in a pattern or practice of selling tobacco products to minors in violation of State law may be denied delivery of tobacco products by all distributors of such products within that State for a period of not to exceed 60 days from the date of such finding.

"(c) BAN ON SHIPPING.—With respect to a State that has been designated as a model State under section 2715, in any case in which the State has made a finding that a retail establishment is, or has been, engaged in a pattern or practice of sale of tobacco products to minors—

"(1) the State may place a temporary ban on the shipping of tobacco products to such retail establishment by distributors in that State;

"(2) the State shall inform the appropriate distributors in that State that supply tobacco products to such retail establishment, that a temporary ban exists on the shipping of such products to such retail establishment;

"(3) a distributor in the State shall not distribute tobacco products to such retail establishment for a period of not to exceed 60 days from the date on which the temporary ban is initiated; and

"(4) if the distributor does not comply with the State temporary ban, the Secretary may seize such products from the distributor.

"(d) JURISDICTION AND PENALTIES.—The district courts of the United States shall have jurisdiction over violations of section 2741 in the same manner, and may enforce the same and take the same actions, as described under sections 302, 303(a), 303(c)(1), 303(c)(2), 304(a)(1), 304(b), 304(c), 304(d), 304(e), 304(f), 306, and 307 of the Federal Food, Drug, and Cosmetic Act for such violations, except that any fines shall be calculated in accordance with the Criminal Fine Improvement Act of 1987, and no showing of interstate commerce shall be required.

"(e) ENFORCEMENT BY CIVIL ACTION.—

"(1) IN GENERAL.—Subject to the limitations contained in this subsection, an individual, including a class or organization on behalf of an individual, may bring a civil action to enforce this title in a court specified in paragraph (4) against a retail establishment or distributor of tobacco products.

"(2) TIMING OF COMMENCEMENT OF CIVIL ACTION.—No civil action may be commenced under this subsection later than 5 years after the date of the last event that constitutes the alleged violation.

"(3) EXCLUSIVE JURISDICTION ON COMPLAINT.—On the filing of a complaint with a court under this subsection, the jurisdiction of the court shall be exclusive.

"(4) VENUE.—An action may be brought under this subsection in a district court of the United States—

"(A) in any appropriate judicial district under section 1391 of title 28, United States Code; or

"(B) in the judicial district in the State in which the violation occurred.

"(5) RELIEF.—

"(A) INJUNCTIVE RELIEF.—In any civil action brought under this subsection, the court may grant as relief against the defendant any permanent or temporary injunction, temporary restraining order, or other equitable relief as the court determines appropriate.

"(B) MONETARY DAMAGES.—If the court determines that a defendant is in violation of this title the defendant shall be liable for monetary damages in an amount equal to the actual damages suffered by the plaintiff.

"(C) ATTORNEY'S FEES.—A prevailing party in an action brought under this subsection may be awarded a reasonable attorney's fee as part of the costs, in addition to any relief awarded.

(D) LIMITATION.—Damages awarded under subparagraph (B) shall not accrue from a date that is later than 2 years prior to the date on which a civil action is brought under this subsection.

"SEC. 2743. REGULATIONS.

The Secretary shall have the authority to promulgate regulations to carry out this subtitle.

"CHAPTER 2—ADDITIVES; INGREDIENTS; MISBRANDED AND ADULTERATED TOBACCO PRODUCTS

"SEC. 2751. TAR, NICOTINE, CARBON MONOXIDE, AND TOBACCO ADDITIVES.

"(a) REPORTING.—

"(1) IN GENERAL.—It shall be unlawful for any person to manufacture, import, or package, any tobacco product brand name unless such person has provided to the Secretary, within the time periods described in paragraph (2), a complete list of—

"(A) all brands of such tobacco products that shall include the levels of tar, nicotine, and carbon monoxide for each brand;

"(B) for each tobacco product brand, each tobacco additive used in the manufacture of each such tobacco product brand name that such person manufactures, imports, or packages; and

"(C) for each such additive, the range of the quantities of such additive used by such person in all tobacco product brand names manufactured, imported, or packaged by such person.

"(2) TIME PERIOD FOR REPORTING REQUIREMENT.—

"(A) ACTIONS ON DATE OF ENACTMENT.—With respect to any tobacco product brand name manufactured, imported, or packed on the date of enactment of this title, the person manufacturing, importing, or packaging such product brand name shall provide to the Secretary the list required by paragraph (1) not later than 3 months after the date of enactment of this title.

"(B) ACTIONS AFTER DATE OF ENACTMENT.—With respect to any tobacco product brand name manufactured, imported, or packed after the date of enactment of this section, the person manufacturing, importing, or packaging such product brand name shall provide to the Secretary the list required by paragraph (1) at least 3 months prior to the date on which such person commences to manufacture, import, or package such product brand name.

"(b) ANALYSIS.—Any manufacturer, importer, or purchaser of a tobacco product shall provide the Secretary, on the request of the Secretary, with information regarding the impact of such additives on health.

"(c) PUBLIC DISCLOSURE REQUIREMENTS.—

"(1) PRESCRIPTION.—Not later than January 1, 1991, the Secretary shall by regulation prescribe requirements for manufacturers to place information on packages of tobacco products or

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in package inserts that are provided with such products so that the public will be adequately informed of the tar, nicotine, carbon monoxide, and tobacco additives contained in any brand or variety of tobacco products, except that spices, flavorings, fragrances, and colorings may be designated as spices, flavorings, fragrances, and colorings without specifically naming each.

"(2) REDUCTIONS AND PROHIBITIONS ON USE OF ADDITIVES.—

"(A) DETERMINATION.—If the Secretary determines that any tobacco additive in a tobacco product, regardless of the amount of such additive, either by itself or in conjunction with any other additive, significantly increases the risk of the product to human health, the Secretary may require that such levels of the tobacco additive in the tobacco product be reduced or that it be prohibited from use.

"(B) BASIS.—

"(i) IN GENERAL.—The determination under subparagraph (A) shall be made by regulation.

"(ii) COMMENT.—Prior to the issuance of a regulation under clause (i), the Secretary shall provide notice and an opportunity for comment pursuant to section 553 of title 5, United States Code, except that the time for such comment shall not be less than 60 days. The Secretary, in the event that it appears that material facts may be in dispute concerning the proposed regulation, shall provide such appropriate opportunities for the presentation of evidence and for cross-examination of witnesses as the circumstances require either before the Secretary or an officer or employee of the Department designated by the Secretary.

"(d) JUDICIAL REVIEW.—Judicial review of a determination under this section shall be governed by and shall be in accordance with section 409(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(g)), except that the requirements of paragraph (3) of such subsection shall not apply.

"SEC. 2752. WARNING LABELS.

"It shall be unlawful for any person to manufacture, import, or package, any tobacco product brand name unless the warning labels as required in section 4(a)(1) of the Federal Cigarette Labeling and Advertising Act shall—

"(1) appear on the two most prominent sides of the product package on which the label is required;

"(2) be in a size which is not less than 20 percent of the side on which the label is placed; and

"(3) include letters in a height and thickness, which assures that the letters in the space provided for the statement will be no less legible, prominent, and conspicuous in size than other matter printed on the side of the package on which the label statement appears.

"SEC. 2753. MISBRANDED TOBACCO PRODUCTS.

"A tobacco product shall be considered to be misbranded if it is not labeled in accordance with the requirements prescribed by the Secretary under section 2751(c)(1).

"SEC. 2754. ADULTERATED TOBACCO PRODUCTS.

"A tobacco product shall be considered to be adulterated—

"(1) if the level of any tobacco additive contained in the product is in violation of a requirement under section 2751(c)(2)(A);

"(2) if it contains any tobacco additive that has been prohibited from use under section 2751(c)(2)(A);

"(3) if it contains in whole or in part any filthy, putrid, or decomposed substance; or

"(4) if it has been prepared, packed, or held under unsanitary conditions where it may have become contaminated with filth or where it may have been rendered more injurious to health.

"SEC. 2755. EXAMINATIONS AND INVESTIGATIONS.

"(a) AUTHORITY.—

"(1) IN GENERAL.—The Office of Regulatory Affairs is authorized to conduct examinations and investigations for the purposes of this subtitle through officers and employees of the Department or through any health officer or employee of any State, territory, or political subdivision thereof, duly commissioned by the Secretary as an officer of the Department.

"(2) PUERTO RICO AND THE TERRITORIES.—In the case of tobacco products packed in the Commonwealth of Puerto Rico or a territory the Office of Regulatory Affairs shall attempt to make inspection of such products at the first point of entry within the United States, when in the opinion of the Office of Regulatory Affairs and with due regard to the enforcement of all the provisions of this title, the facilities at the disposal of the Office of Regulatory Affairs will permit of such inspection.

"(3) DEFINITION.—As used in this subsection the term 'United States' means the States and the District of Columbia.

"(b) SAMPLES.—Where a sample of a tobacco product is collected for analysis under this subtitle the Center shall, on request, provide a part of such official sample for examination or analysis by any person named on the label of the product, or the owner thereof, or the attorney or agent of such persons, except that the Secretary may, by regulation, make such reasonable exceptions from, and impose such reasonable terms and conditions relating to, the operation of this subsection as the Secretary finds necessary for the proper administration of the provisions of this subtitle.

"(c) INSPECTION OF RECORDS.—For purposes of enforcement of this subtitle, records of any department or independent establishment in the executive branch of the Federal government shall be open to inspection by any official of the Department of Health and Human Services duly authorized by the Office of Regulatory Affairs to make such inspection.

"SEC. 2756. NONTOBACCO NICOTINE CONTAINING PRODUCTS.

"Any product that contains nicotine, whether or not that product also contains tobacco, but that is not a tobacco product as defined in section 2761, shall be considered to be a drug under section 201(g)(1)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)(C)).

"SEC. 2757. CLARIFICATION.

"(a) ADDITIONAL INFORMATION.—Nothing in this title, the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333 et seq.), the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4401 et seq.), or the Comprehensive Smoking Education Act shall prohibit (15 U.S.C. 1331 et seq.) a manufacturer of tobacco products from providing consumers with information concerning tobacco product constituents, tobacco smoke, and the adverse effects of tobacco use in addition to the information that such manufacturers are required to provide pursuant to this title, the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333 et seq.), and the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4401 et seq.).

"(b) EFFECT ON LIABILITY LAW.—Nothing in this title, the Federal Cigarette Labeling and Advertising Act or the Comprehensive Smoking Education Act of 1984 shall be interpreted to relieve any person from liability at common law or under State statutory law to any other person.

"SEC. 2758. PARTIAL REPEAL OF FEDERAL PREEMPTION ON STATE REGULATION OF ADVERTISING OF TOBACCO PRODUCTS.

"Nothing in this title, section 5 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332, et seq.), or the Comprehensive Smokeless Tobacco Health Education Act (15 U.S.C. 4401 et seq.) shall prevent any State or local government from enacting additional restrictions on the sale or distribution of tobacco products (including sales through vending machines and free samplings), on the placement or location of stationary outdoor advertising of tobacco products, or transit advertising of tobacco products under the control of State or local transit authorities, that is displayed solely within the geographic area governed by the applicable State or local government, to the extent consistent with the First Amendment to the Constitution.

"Subtitle D—Miscellaneous Provisions

"SEC. 2761. DEFINITIONS.

"As used in this title:

"(1) ADULTERATED.—The term 'adulterated' means that a tobacco product contains any poisonous or deleterious substance or additive that may render it injurious to health, except that in the case of a substance or additive that is not an added substance or additive such tobacco product shall not be adulterated if the quantity of such substance or additive in such tobacco product does not ordinarily render it injurious to health.

"(2) CENTER.—The term 'Center' means the Center for Tobacco Products established under section 2701.

"(3) CIGARETTE.—The term 'cigarette' means—

"(A) any roll of tobacco wrapped in paper, or in any substance not containing tobacco, that is to be burned and that is marketed for smoking pleasure only; and

"(B) any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling is

likely to be offered to, or purchased by consumers as a cigarette described in subparagraph (A).

"(4) INTERSTATE COMMERCE.—The term 'interstate commerce' has the same meaning given such term in section 201(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(b)).

"(5) MINOR.—The term 'minor' means any individual who is under the age of 18 years.

"(6) MISBRANDED.—The term 'misbranded' means that the labeling of a tobacco product is false or misleading in any particular.

"(7) PERSON.—The term 'person' includes individual, partnership, corporation, and association.

"(8) RECIPIENT.—The term 'recipient' means any entity or individual that has received a grant, contract, or cooperative agreement under this title.

"(9) SMOKELESS TOBACCO.—The term 'smokeless tobacco' means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral cavity.

"(10) STATE.—The term 'State' means any State or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

"(11) TERRITORY.—The term 'territory' has the same meaning given such term in section 201(a)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(a)(2)).

"(12) TOBACCO ADDITIVE.—The term 'tobacco additive' means any ingredient that is added to a tobacco product in the process of manufacturing or producing a tobacco product.

"(13) TOBACCO PRODUCT.—The term 'tobacco product' means cigarettes, cigars, little cigars, pipe tobacco, smokeless tobacco, and snuff, and any other product that consists primarily of tobacco, is intended for human consumption, and is marketed for tobacco or smoking pleasure only.

"(14) TOBACCO USE.—The term 'tobacco use' means the use of any tobacco product that is used through smoking, inhalation, or mastication, and such term shall include the use of nasal and oral snuff.

"Subtitle E—School Programs and Policies to Prevent Tobacco Use

"SEC. 2771. SCHOOL PROGRAMS AND POLICIES TO PREVENT TOBACCO USE.

"(a) GRANTS.—The Secretary, acting through the Director of the Centers for Disease Control, shall assist schools in the implementation of effective programs and policies to prevent tobacco use. The Secretary may make grants to, or enter into contracts with, State departments of health and education, and, in consultation with State health and education agencies, to local departments of health and local education agencies, and to other public entities, to assist in implementing effective programs and policies to prevent tobacco use.

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"(b) USE OF FUNDS.—Not less than 80 percent of the amounts appropriated under subsection (c) shall be made available to recipients of grants and contracts under this section.

"(c) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary in each of the fiscal years 1992, 1993, and 1994.".

(b) FEDERAL CIGARETTE LABELING AND ADVERTISING ACT.—

(1) HEALTH WARNING LABELS.—Section 4(a) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333(a)) is amended by striking "SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monixide," each place such occurs in paragraphs (1), (2), and (3), and inserting the following: "SURGEON GENERAL'S WARNING: Smoking is Addictive. Once you start you may not be able to stop.".

(2) REPEAL OF CERTAIN LABEL REQUIREMENTS.—Section 4(b) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333(b)) is amended by striking out paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(3) REPEAL OF CONFIDENTIALITY.—Section 7(b) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335a(b)) is amended by striking out paragraph (2).

(c) CONFORMING AMENDMENTS.—

(1) Sections 2701 through 2714 of the Public Health Service Act (42 U.S.C. 300cc through 300cc-15) are redesignated as sections 2801 through 2814, respectively.

(2)(A) Sections 465(f) and 497 of such Act (42 U.S.C. 286(f) and 289(f)) are amended by striking out "2701" each place that such appears and inserting in lieu thereof "2801".

(B) Section 305(i) of such Act (42 U.S.C. 242c(i)) is amended by striking out "2711" each place such appears and inserting in lieu thereof "2811".

SEC. 4. DRUG-FREE SCHOOLS AND COMMUNITIES ACT OF 1986.

(a) STATE PROGRAMS.—Section 5122(a)(1) of the Drug-Free Schools and Communities Act of 1986 (20 U.S.C. 3192(a)(1)) is amended by inserting "and tobacco use" after "alcohol abuse".

(b) LOCAL DRUG ABUSE EDUCATION PREVENTION PROGRAMS.—Section 5125(a) of such Act (20 U.S.C. 3195(a)) is amended—

(1) in the matter preceding paragraph (1), by inserting "and tobacco use" after "alcohol abuse";

(2) in paragraph (11), by striking out "abuse," and inserting in lieu thereof "abuse and tobacco use,";

(3) in paragraph (13), by inserting "and tobacco use" after "alcohol abuse" each place that such occurs; and

(4) in paragraph (14), by inserting "and tobacco use" after "alcohol abuse".

(c) LOCAL APPLICATIONS.—Section 5126(a)(2) of such Act (20 U.S.C. 3196(a)(2)) is amended—

(1) in subparagraph (D), by striking out "drug" and inserting in lieu thereof "drug, tobacco";

(2) in subparagraph (E), by—

(A) by striking out "applicant's drug" and inserting in lieu thereof "applicant's drug, tobacco";

(B) by striking out "and" at the end of clause (i);

(C) by inserting "and" at the end of clause (ii); and

(D) by adding at the end thereof the following new clause:

"(iii) how it will discourage use of tobacco products by students;"; and

(3) in subparagraph (I), by striking out "conduct drug and alcohol abuse" and inserting in lieu thereof "conduct drug and alcohol abuse and tobacco use".

(d) FEDERAL ACTIVITIES.—Section 5132(b) of such Act (20 U.S.C. 3212(b)) is amended—

(1) in paragraph (1), by inserting before the semicolon the following: "and for dissemination under section 2727 of the Public Health Service Act"; and

(2) in paragraph (2), by striking out "drug" and inserting in lieu thereof "drug and tobacco".

(e) DEFINITIONS.—Section 5141(b)(1) of such Act (20 U.S.C. 3221(b)(1)) is amended by striking out "alcohol" and inserting in lieu thereof "alcohol, the use of tobacco,".

SEC. 5. INCENTIVE GRANTS TO ESTABLISH SMOKE FREE SCHOOLS.

(a) IN GENERAL.—There are authorized to be appropriated $5,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 and 1994, to enable the Secretary of Education to make incentive grants to State education agencies in accordance with this section.

(b) STATE POLICY.—To receive a grant under this section, a State shall establish a policy that—

(1) creates smoke-free elementary and secondary school buildings and grounds and school buses;

(2) requires schools to establish smoking areas in which adults only are permitted to smoke, and to ensure adequate safeguards exist to protect students from exposure to smoke; and

(3) provides technical assistance to schools and other assistance to implement the provision of this section.

(c) USE OF FUNDS.—A State receiving a grant under subsection (a) shall use such grant to disseminate materials to school personnel and students, and hold conferences and meetings, concerning the health hazards of tobacco use by students.

(d) REGULATIONS.—The Secretary of Education, in consultation with the Secretary of Health and Human Services, shall promulgate regulations necessary to implement this section.

(e) ADDITIONAL RESTRICTIONS.—A State receiving a grant under subsection (a) may place restrictions on the use of tobacco products in schools in addition to the requirements referred to in subsection (b). A State receiving funds under this section shall provide assistance under this section only to schools that are subject to the State laws described in subsection (b).

(f) APPLICATION.—No grant may be made under this section unless a State education agency submits an application to the Secretary of Education in such form, in such manner, and

containing such information as the Secretary of Education shall require.

SEC. 6. TECHNICAL AMENDMENTS.

(a) COMPREHENSIVE SMOKING EDUCATION ACT.—Section 3 of the Comprehensive Smoking Education Act (15 U.S.C. 1341) is repealed.

(b) COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION ACT OF 1986.—Sections 2, 4, 5 (a) and (b), and 8 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4401, 4403, 4404 (a) and (b), and 4407) are repealed.

SEC. 7. STUDY AND REPORT.

(a) REQUIREMENT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services, in consultation with the Secretary of Agriculture, shall conduct the study described in subsection (b), and prepare and submit, to the appropriate Committees of Congress, a report concerning the results of such study.

(b) CONTENT OF STUDY.—The study referred to in subsection (a) shall—

(1) investigate the use of pesticides on tobacco and the presence of pesticides in tobacco products;

(2) analyze the effect that the presence of pesticides in tobacco products has on human health; and

(3) determine whether tolerances should be established for the use of pesticides in tobacco products.

SEC. 8. CONSTRUCTION.

Nothing in this Act, or an amendment made by this Act, shall be construed to limit, restrict, expand, or otherwise affect the authority of the Federal Trade Commission.

IV. COMMITTEE VIEWS

SUBTITLE A—CENTER FOR TOBACCO PRODUCTS

This bill directs the Secretary of the Department of Health and Human Services to establish a new Center for Tobacco Products within the Centers for Disease Control. The functions of the Center include education about the health effects of tobacco use, research regarding patterns of use and cessation, assistance to the states to achieve further reductions of tobacco use, coordination of federal education and research activities on tobacco products, and provision of information foreign countries where tobacco use or mortality from tobacco use is on the use. The Center will administer several new programs through which it will expand federal efforts to educate the public about the health effects of tobacco use and reduce rates of smoking and use of smokeless tobacco.

It is the Committee's intent that the new Center be created out of the existing Office on Smoking and Health. The Committee views the Office of Smoking and Health as the obvious choice as the base of expansion of federal activities to reduce tobacco use, given the history, expertise, and contacts of that Office. The Committee has authorized $25 million for the activities of the Center. The budget of the Office of Smoking and Health should rise from

the current level of $3.5 million to $25 million to support the expansion of operations.

SUBTITLE B—ANTI-SMOKING PROGRAMS

Chapter 1—Public information compaigns

The new programs administered by the Center will include a national information program of public service announcements and paid advertisements about the health effects of tobacco use and tobacco smoke. The Committee envisions this public information campaign as carried by diverse media, including print media, outdoor and transit advertisements, and radio and television. An authorization of $50 million is allotted to provide sufficient funding for this national effort.

The program should be designed to prevent initiation and encourage cessation of tobacco use. It should be aimed at those groups which have the greatest prevalance of tobacco use or suffer the greatest risk from tobacco use. This includes youth, school dropout, pregnant women, minorities, blue collar workers, and low income individuals.

The Committee has particular interest in reaching youth with the public information campaign. The age of initiation of tobacco use has dropped since the first Surgeon General's report over 25 years ago. Currently, 90% of smokers begin smoking before they become twenty-one. Among high school seniors, over 50% begin by age 14 and 25% by age 12. Because nicotine is addictive, most young smokers are addicted before they understand the consequences of their actions and before they are legally old enough to smoke. Subsequently, it is difficult for them to quit. Of those high school seniors who smoke a half a pack a day, 53% try to quit but cannot. In fact, 95% of high school seniors think they will quit smoking within five years. The reality is that only 25% quit by eight years later. Education aimed at young teens and pre-teens is essential in order to provide this group with resistance skills to be used against industry promotions or peer pressures that may encourage them to smoke or use smokeless tobacco.

The Committee believes that the public information campaigns that comprise the national information programs should be designed in part to specifically counter the messages contained in tobacco product advertising and promotion. Existing advertisements visually equate tobacco use with youth, action, sports, beauty, success, and popularity. These advertisements create images young people emulate and and contribute to an atmosphere which encourages young people to start smoking. The Committee believes it is necessary and important to demonstrate through counter-advertising techniques that tobacco use is not equated for very long with youth, health, and vigorous activity, but rather with illness, disability, and death.

The Committee is aware of the paid advertising messages that are part of the educational efforts of states like Minnesota and California, and of voluntary organizations like Doctors Ought to Care (DOC) in Houston. Minnesota has demonstrated the importance of paid advertising to a well rounded and effective public education campaign. The Commissioner of Health of Minnesota testified at the Committee's first hearing on February 20, 1990, that the state has leveraged additional public service announcement time from the media through its purchase of paid advertising time. The education campaign in Minnesota is credited with helping to reduce the rate of smoking to one of the lowest in the nation.

The Committee recommends attention to the counterads designed by DOC. The Committee believes there is a role for parody and humor in pointing out the misleading nature of existing tobacco advertising.

The Committee believes that counter-advertisements can both inform and discourage tobacco use among children. The counter advertising campaign carried out on national television in 1970 pursuant to the Federal Communications Commission's Fairness Doctrine ruling produced a significant decrease in tobacco use. This led to the willingness of the cigarette industry to support a television advertising ban.

A question has been raised about the fairness of running paid television ads about the health effects of tobacco use when no tobacco product advertising is permitted on television. The Committee notes that there is currently considerable air time devoted to the coverage of tobacco industry sponsored events. This coverage includes ubiquitous images of cigarette and smokeless tobacco brand names. A video tape which was displayed at the February 20th hearing showed many examples of tobacco product promotion on television. The Committee concludes that tobacco products are currently being promoted on electronic broadcast media despite the advertising ban. The video evidence presented at the hearing also included examples of young teenagers participating in the promotional activities being broadcast. The Committee views this as inappropriate and a violation of the tobacco industry's own voluntary code on advertising practices.

The Committee believes it is essential that there be no loss of time currently devoted to public service announcements by any media because of the availability of funds to pay for ads on the same subject. The Center must obtain a written assurance from all media with which paid messages are placed that there will be no decrease in public service announcement time devoted to the reduce tobacco use. The Committee would prefer to see an airing of public service announcements at a time when they are likely to achieve a greater reach. The Committee suggests that networks which improve the placement of public service announcements to increase the reach and frequency should be considered most favorably for placement of paid advertisements.

Chapter 2—Model state leadership incentive grants for antitobacco use intervention

The Center will award 10-20 states with model state leadership incentive grants to support activities which prevent the initiation of tobacco use, promote cessation of tobacco use, or which implement and enforce existing state laws on sale of tobacco products to minors. To be designated a model state, a state must have in effect a law that prohibits the sale of tobacco products to individuals who are under the age of 18 and must seek to improve the enforcement of the law. It must also have in effect a law or regulation that is

intended to reduce the use of, or access to, cigarette vending machines by minors who are under the age of 18 and must seek to improve the enforcement of that law or regulation.

In recent years, many state health directors have sought new policies and programs or strengthened policies and programs to reduce tobacco use. This expanded effort is based on national priorities as defined by the Secretary of the Department of Health and Human Services. DHHS has identified tobacco use as the number one preventable cause of death in the nation. The Department has also made a smoke-free society by the year 2000 one of its key health objectives.

State health directors have taken a fresh look at the problem in their efforts to pursue this major national public health objective. The Surgeon General has concluded that nicotine is addictive and that most smokers initiate cigarette use while they are still in their teens. At least half of all smokers initiate cigarette use while they are very young teens. Public health officials agree that in order to achieve further significant decrease in smoking prevalence, preventing the initiation of smoking by youth must occur before they become addicted.

Education is one important route to preventing the initiation of tobacco use. Another is the enforcement of state laws on sale of tobacco products to minors. In recent years, there has been renewed interest in these laws by state public health officials.

A 1990 report of the Office of the Inspector General (OIG) of HHS concluded that despite the fact that 44 states and the District of Columbia have laws which prohibit the sale of cigarettes to minors, children and young teens can and do buy cigarettes easily whenever they want. The OIG found that only five states could even report how many violations of their laws had been identified. These states found only 32 violations in 1989. Two thirds of the public health officials contacted by the OIG confirmed the lack of enforcement of their state's laws. Meanwhile, it is known that an estimated one billion of cigarettes are sold to youngsters (under the age of 18) each year.

State health directors have started to look at state laws with renewed interest. Retail establishments in virtually all states make a practice of requesting identification before they sell alcoholic beverages to an individual who could be under the legal drinking age. This simple procedure—a request for identification before the purchase of tobacco products—should be used as commonly as it is for the purchase of alcohol. The procedure is already familiar to store clerks and cashiers.

A number of state health directors are seeking ways to improve the compliance of retail establishments with state laws on sale of tobacco products. Currently, retail establishments have little knowledge of state laws. There have been few efforts to educate their owners or encourage their compliance. The public is poorly informed about the laws. Systems for enforcement are lacking.

The model state incentive program is intended to assist states in implementing, enforcing or improving these state laws. The Committee is aware of voluntary efforts already underway on the part of national and local associations of retailers to educate their membership on this issue. The committee notes that the smokeless tobacco industry has also conducted a voluntary education program emphasizing that the use of their product is strictly for adults. Their three point program involves industry support of state legislation to establish 18 years of age as the minimum age of purchase of all tobacco products; a retail education program which supports the enforcement of 18 as the mandated age of purchase, and a print program to promote its adults only message. The Committee is supportive of these efforts but believes they will have to expand considerably if they are to have any significant effect. In addition, testimony received from a police official from Woodridge, Illinois convinced the Committee that voluntary measures, even when combined with the passage of better laws, will not be sufficient to achieve compliance. Effective enforcement is essential.

In the town of Woodridge, it was shown on follow-up studies that, despite an improved law which required licensing of all tobacco venders and threatened revocation of licenses for noncompliance—and an educational campaign to notify retail establishments regarding their new responsibilities—compliance remained poor until surprise enforcement campaigns were carried out and publicized.

Two years after the implementation of the Tobacco License Law coupled with surprise enforcement campaigns, a follow-up study done by DePaul University, showed that the effort had reduced teen smoking by over 50%. Merchant cigarette sales rates to minors were now completely eliminated in back-to-back trials. The follow-up survey showed that the student smoking rates for 7th and 8th graders had declined from 15% to 5%. Students who classified themselves as "experimental smokers" dropped from 50% to 23%.

The model state grant program will assist states to educate retailers and the public about the existence of state laws, to establish procedures for the reporting of violations, to establish routines for enforcement, and to improve access to the system of enforcement for the public. Evaluation of these efforts is an integral part of any program supported by the incentive grant. The Center should be kept abreast of state progress in developing and evaluating these systems.

In addition, this legislation creates new federal authority that will permit states to request, and the federal government to provide, assistance to improve the enforcement of state laws on sales to minors. In order to receive a grant under this Act, a state must establish a mechanism for reporting of citizen complaints concerning retail establishments that sell tobacco products to minors in violation of State law, and establish procedures by which the state may make a finding or presumption that a retail establishment has a pattern or practice of selling tobacco products to minors in violation of state law.

The state must also establish a procedure by which it can request the assistance of the Federal Office of Regulatory Affairs (created by this Act) if it so chooses, in order to better enforce its own laws on sales to minors.

New federal authority established in Subtitle C of this Act permits the Office of Regulatory Affairs to assist the model state in its enforcement function with measures (including bans on shipping, and product seizures) which may be more effective than those

measures which are currently at the disposal of the state. These procedures could be followed at the state's discretion if the enforcement measures permissable under state law are not effective.

Information on how to activate these enforcement measures will be distributed to each model state. So will model printed materials for distribution to retail establishments concerning the health hazards and illegality of the sale of tobacco products to minors, assistance in the planning of meetings to educate retail establishments, and the development of reporting systems to identify retail establishments that sell to minors in violation of state law. Notification systems which place retail establishments on notice that they are acting in violation of state law, and that state or federal penalties may be the result will also be established.

Vending machine sales should also be addressed as part of state efforts to curtail tobacco sales to minors. Though vending machine sales account for about 15 percent of sales to minors, no system will be effective in eliminating sales to minors unless vending machine sales are addressed. Some states have restricted vending machine sale of cigarettes only to those locations which are off limits to minors, such as bars and liquor stores. Electronic locking devices are also in use in some areas. These may be deactivated from the cash register after verification of age has been presented to the cashier. Recently, the Secretary of Health and Human Services advocated that states ban entirely the use of vending machines which dispense cigarettes.

Chapter 3—Education to decrease tobacco use in the workplace

Worksites provide an ideal opportunity for implementing tobacco use education programs since they represent a setting in which a large number of smokers may be reached. This legislation authorizes $5 million to be spent on education programs at the workplace. Efforts should be focused on preventing initiating and encouraging cessasion of tobacco use.

Efforts to help motivate people to quit smoking or chewing tobacco should be directed toward those populations with the highest prevalence of tobacco use and activities should be conducted in those settings where programs are most likely to reach the intended audiences. Effort should also be directed toward populations which may be at higher risk because of combined exposure to tobacco smoke and to workplace hazards associated with respiratory diseases. The Committee finds that certain groups of employees have higher smoking rates than the general population and believes that special efforts must be made to reduce tobacco use among these individuals. In 1985, the smoking prevalence rate among blue-collar workers aged 20 years and older was 39.7%, while the rate for white-collar workers was 27.5%. This difference reflects differences in educational level. In general, the rate of smoking of those with the most education is half the rate of smoking of those with the least education. Some worksites which often have high smoking rates include factories, construction sites and other places employing service personnel.

An important criterion in determining who receives these grants should be a potential for future replicability. These programs will be demonstration projects which will serve as models for other

worksites to use in educating their employees and their dependents on the benefits of not using tobacco. There is a requirement that all workplace education grants would be implemented with the full cooperation of the employer. They could also be initiated by the employer.

There is growing interest on the part of employers in reducing smoking rates among their employees. This is based, in part, on economic concerns. According to the Department of Health and Human Services, some of the economic costs of smoking to employers are: $24 billion in lost productivity annually by American business due to smoking; $28 billion annually spent on medical costs—almost half of which is paid by businesses; and there are 80 million workdays lost each year to smoking-related illnesses. In addition, smoking employees are 50% more likely to be hospitalized than nonsmokers; absentee rates are 50% higher for smokers than nonsmokers.

The Committee believes that workplace efforts to reduce tobacco use among people with high usage rates should include motivation and support for smoking cessation by workers and their family members and education on the health effects of tobacco use to prevent initiation of tobacco use among employees and their families, particularly children.

The Committee views these workplace education programs as voluntary programs. The workplace education grants should not be awarded where there are policies which make the job itself, wages or other conditions of employment contingent on participation in tobacco use education or cessation programs.

Worksite wellness programs, including education and health promotion activities, have proven to be quite effective in reducing tobacco use for many employers. The Committee believes that these worksite programs will be most effective if they are developed with cooperation between employer and employee. The Committee views the following as likely recipients for the workplace education grants: state and local health departments, employee organizations (including trade unions, and others), employers, voluntary health organizations such as the American Lung Association, the American Heart Association and the American Cancer Society, and community organizations. These organizations could develop and implement worksite smoking education programs with the agreement and endorsement of the employer.

SUBTITLE C—PROHIBITED ACTS

Chapter 1—Prohibited acts and enforcement

This chapter specifies the acts which are prohibited and the range of enforcement procedures available.

It will be unlawful for a manufacturer, to introduce or deliver for introduction into interstate commerce or to receive in interstate commerce a tobacco product that is adulterated or misbranded in violation of the requirements set forth in sections 2751-2754, and other provisions of the Act.

The Committee recognizes that the need to disclose additives to the public must be balanced with the need to protect the trade secrets of tobacco manufacturers. It will be unlawful to disclose trade

secret information to any person except to the Secretary of Health and Human Services and designated employees of such agency, or to the courts when such information is relevant in a judicial proceeding brought under this title. Nothing in this section shall authorize the withholding of information by the Secretary or by any officers or employees under his control from the duly authorized Committee of Congress. Any request by Congress must be accompanied by safeguards to assure the confidentiality of such information.

The Committee wants to ensure that all information that is included on or with any tobacco product is also available to the public. Such information must be made available upon written request. It should not be necessary to purchase a tobacco product in order to receive such information.

Enforcement

The Committee recognizes that the Food and Drug Administration (FDA) has established an extensive structure to enforce the requirements of the Food, Drug and Cosmetic Act. The Committee intends to provide the Office of Regulatory Affairs with similar enforcement powers as granted to the FDA.

Section 2742 authorizes enforcement of the Act through such procedures as injunctions, civil and criminal penalties, seizures and warning letters as outlined in the references to the relevant sections of the Food, Drug and Cosmetic Act. The Committee understands that the Secretary of Health and Human Services has provided guidance to the Food and Drug Administration concerning the implementation of its enforcement authority. The Committee expects that the Secretary will provide similar guidance to the Office of Regulatory Affairs as necessary.

Two enforcement authorities under this section pertain to the model state program. A model state may request that these authorities be activated to improve the effectiveness of its efforts to stop sales to minors. The first authority is denial of delivery. If a model state makes a finding that a retail establishment has been engaged in a pattern or practice of selling tobacco products to minors in violation of state law, under the authority in this section, the retail establishment may be denied delivery of tobacco products by all distributors of such products within that state for a period not to exceed 60 days from the date of such finding. This enforcement procedure would be activated at the initiative of the state. The distributors in that state would be notified of the ban on shipping by the state and could be additionally notified by the federal Office of Regulatory Affairs.

The second authority is product seizure. After a state has informed the appropriate distributor(s) in that state which supply tobacco products to an errant retail establishment that a temporary ban exists on the shipping of tobacco products to that retail establishment, if the distributor does not comply with the state temporary ban, the Secretary may seize tobacco products from the distributor as a penalty for noncompliance. The Committee hopes that the existence of this seizure authority will be sufficient to achieve compliance of distributors with any bans on shipping and will make it unnecessary to actually use the seizure authority.

The Office of Regulatory Affairs will exercise the seizure authority. Any actual seizures could be carried out in a variety of ways as determined by the Office of Regulatory Affairs in conjunction with other federal offices, including through action at one of the 20 local offices of the Food and Drug Administration's Office of Compliance.

Chapter 2—Additives Ingredients (Additives, Ingredients); misbranded and adulterated tobacco products

The Committee recognizes that the need to disclose additives to the public must be balanced with the need to protect the trade secrets of tobacco manufacturers and their suppliers like flavor and extract manufacturers. The Committee firmly believes that the public is entitled to have information that may affect their health and safety. In order to achieve this balance, disclosure of additives to the public and to the Secretary is required in a manner that does not disclose specific quantities of additives to specific brands. Rather disclosure of a range of quantities for each company is required.

This legislation will make it illegal from any company to manufacture or import any tobacco brand names unless there is provided to the Secretary a complete list of each tobacco additive, including fragrances, flavorings, and colorings, used in the manufacture of each tobacco product brand name and the range of quantities of each additive used in all tobacco brand names manufactured by that company. Flavorings should be revealed in a similar manner to how they are revealed to the Food and Drug Administration. The lists must be provided to the Secretary no later than three months after the date of enactment of the bill, or three months prior to introduction of any new brand. The manufacturer is required to provide the Secretary, on request of the Secretary, with information regarding the impact of any additive on health.

Under the terms of this provision, manufacturers would be required to disclose to the public on tobacco product packages or in package inserts, the additives contained in such product, except that flavorings, fragrances, and colorings may be designated as such without specifically naming each. Disclosure on the product carton is not sufficient. Disclosure of tar and nicotine content on the package is also required.

If the Secretary determines that any additive, either by itself, or in conjunction with any other additive, significantly increases the risk of the product of human health, the Secretary may require that such use of he tobacco additive be reduced or prohibited.

The authority for additive regulation will reside in an Office of Regulatory Affairs within the Public Health Service established or designated from among existing entities by the Secretary.

In 1984, with the passage of the Conprehensive Smoking Education Act, P.L. 98-474, a requirement was established that cigarette manufacturers report additives to the Secretary of Health and Human Services. The Secretary was directed to report to the Congress on "any such ingredient which in the judgment of the Secretary poses a health risk to cigarette smokers." The legislated reporting system requires that the company using a particular additive and the brand in which a particular additive was contained not be revealed. There is no requirement for the industry to report

quantities of any additive used or even the range of any particular additive used by any company. As a result, annual reports which have gone to the Secretary have been composite lists of cigarette additives used by cigarette producing companies. With no information about quantity, brand, or company, the composite lists which have been compiled and presented annually to the Secretary have provided no useful information from which the Secretary can make a judgment on the health risk to cigarette smokers posed by such additives.

The Committee believes that it was the intent of Congress in 1984, when P.L. 98-474 was signed into law, to provide the Secretary with useful information for which to make the kind of judgment it requested. Clearly that objective was not achieved by the reporting requirement which was established. The Committee believes it is time to follow through on the intent of Congress as indicated by the passage of the earlier legislation. The reporting requirement contained in this bill should result in useful information so that judgments about the risk of individual additives or combinations of additives will be technically feasible.

The Committee has the firm conviction that information about additives to tobacco products should be avilable to the consumer in parallel with the requirements that apply to additives to foods, drugs, or cosmetics.

The Committee believes that the requirements of this section will protect trade secrets. The Committee is aware of the considerable concern on the part of individual companies regarding protection of the formulation for their individual products. The provisions of this section have been carefully designed to permit disclosure to the public of basic information to which they are entitled regarding the component additives of the products they purchase, while protecting key information that might reveal the exact formulation of the product. Fragrances, flavorings, spices, and colorings may be designated as such; individual fragrances, flavorings, and colorings do not have to be itemized on the package. Only the range of quantities of each additive and not the specific quantity of each additive will be required to be revealed to the Secretary by each company for their products. This will allow the Secretary to develop models for different combinations of additives and make initial judgments about an approach for analysis and data collection.

The Committee recognizes that there are differences among tobacco products. Since there are dozens of cigar and pipe tobacco manufacturers, and a great multiplicity of products (there are about 4,500 different cigar shapes and sizes, for example) the ability of manufacturers in the cigar and pipe tobacco industries to comply with the legislation will be hampered. Some information must be obtained from suppliers who may regard the information as proprietary, thus there may have to be negotiations between the manufacturers and their suppliers. Given the Committees interest in disclosure of non-tobacco additives, the Committee nevertheless feels that the tobacco products should be subject to the reporting requirements contained in the Act. The Committee recognizes that manufacturers of cigars and pipe tobacco may need additional time to comply with the reporting and discloure requirements imposed by the Act.

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It has been suggested to this Committee that a model for the regulation of additives to tobacco products may be found in the system of regulation of food additives. The GRAS list (Generally Recognized as Safe) has been suggested as a starting point for separating tobacco additives into those which need analysis and those which do not. While this sytsem may hold some promise as an approach to the regulation of additives to smokeless tobacco, the GRAS list may have little relevance to cigarette additives which are ingested in a differfent manner.

This act alters the size and location of the warning labels presently displayed on tobacco product packages. The current system of rotating warning labels are barely visible on most packages, despite statutory language contained in the Federal Cigarette Labeling and Advertising Act and the Comprehensive Smoking Education Act which required that such warning labels be "conspicuous." Labels are small in size and easy to overlook.

According to the 1989 report of the Surgeon General, researchers who have addressed the question of format of the warning labels have found that consumer's attention will be most effectively caught by novel formats, such as the one proposed in this bill. The new requirement will move the warning labels from the sides of the package to the front and back of the package and increase the size so that they occupy 20% of the surface area and can be more easily visualized.

This system is similar to the system formerly used by Canada. A recent change in Canada's laws increased the size of their warning labels to 25% of the surface area, and moved them to the top front and back of the package. A similar change is being adopted by Great Britain.

This Act state clearly that neither the Federal Cigarette Labeling and Advertising Act of the Comprehensive Smoking Education Act of 1984 shall be interpreted to relieve any person from liability at common law or under State statutory law. The Committee does not believe that the requirement for rotating warning labels should bestow immunity from state liability law.

This provision would apply to cigarettes the same common law standards that apply to other products sold on the market. Such a provision already applies to smokeless tobacco products as a result of the 1986 Comprehensive Smokeless Tobacco Education Act. One of the basic tenets of state liability law is duty to warn, the notion that the producer of the product has a responsibility to warn the consumer of any dangers of the product through whatever means it chooses which are effective. This provision would allow juries to make the determination in each case as to what the manufacturer did or did not do to meet the general standard for responsible behavior.

Federal requirements for warning labels or labeling in general, should not automatically produce immunity from state liability law. There are many consumer products which are labeled with warning labels or cautionary information as a result of federal law or regulation. These include children's toys, pharmaceuticals, chemicals, pesticides, and many other types of products. These labels have not generally been considered to confer a complete immunity from state liability law. In addition, it should be noted that

the significance of required labels may vary considerably, depending on the extent to which a product is federally regulated in the first place. For example, the case of tobacco products, where the federal government does not establish safety or health requirements for such products differs considerably from the case of products like drugs and medical devices which are actively regulated under the Federal Food, Drug, and Cosmetic Act.

Nothing in this bill will permit a judge to issue an injunction or any other mandatory relief ordering tobacco companies to use any specific form or words. The provisions in this bill do not and are not intended to give states the independent regulatory authority to require additional affirmative statements or warning labels pertaining to smoking and health on the package or on advertisements for tobacco products. It is not the purpose nor the intended result of this Act that juries will be able to find liability for failure to include specific information on the package label or in the advertising. The provision should also make clear that product producers could face liability under state common law for affirmative statements that may be either false or misleading, and for failure to disclose to the consumer relevant information that the consumer would not otherwise know.

This Act repeals in part the preemption on state regulation of advertising of tobacco products. States would regain the authority to regulate the placement and location of stationary outdoor advertising and transit advertising.

Currently, the states are prohibited from regulating the advertising of tobacco products. Tobacco is the only consumer product which is protected from this type of state regulation. The partial repeal of the federal preemption would allow states and other local jurisdications to regulate stationary outdoor advertising and local transit advertising of tobacco products as they see fit. They will be free to address the problem of targeting of minority neighborhoods.

In recent years, there has been much documentation of saturation advertising of inner city minority neighborhoods, Billboard surveys in cities across the country have revealed differential rates of advertising of tobacco products in inner city minority neighborhoods compared with predominantly white neighborhoods in adjacent communities. In Washington, D.C., in a 1989 survey, numerous billboards and wall panels promoted tobacco in lower income inner city neighborhoods, while almost none were found in upper-income neighborhoods.

In New Orleans, a survey released by the Planning Commission in 1989, showed nearly four times as many billboards in a predominantly Black city council district, compared to an adjacent White district. Cigarettes had the largest share of the billboard ads (36%). In St. Louis, a 1989 study done by a Community Development Agency, found that 59% of all billboards were located in the predominantly Black North Side wards compared to 22% in the predominantly White South Side wards. Tobacco ads accounted for 32% of billboards in the Black community, compared to 21% in the other community. In Baltimore, another study revealed that the vast majority of billboard faces within the city limits were located in neighborhoods in which the majority (60%) of the residents were Black. Tobacco products were the most advertised product, accounting for 40% of the billboards. Similar studies have been done in San Francisco, Bostion, and other cities.

The Committee objects to this type of targeting and notes that it is certainly not increased purchasing power that leads to disproportionate advertising in such neighborhoods.

Unlike magazines and newspapers, there is no individual choice when it comes to viewing outdoor and transit advertising; it is unavoidable. In the words of a Wayne County (Detroit) Commissioner who made a presentation at one Committee briefing, "I am particularly outraged about tobacco billboard advertising because we do not have the ability to turn it off. One is literally a forced capitve audience. This results in our children being conditioned at a very early age that cigarette smoking is glamorous, sexy, fun, and healthy." The Committee anticipates that states and local jurisidiction may seek to regulate the size or number of billboards and outdoor signs, especially in those areas that face this type of saturation advertising. It anticipates that regulatory efforts will be consistent with the First Amendment to the Constitution.

Though it has been suggested that the Committee seeks to encourage jurisdictions to eliminate outdoor advertising of this product, this is not the Committee's intent. The Committee points out that states have had the authority to regulate the advertising of alcoholic beverages for nearly three quarter's of a century. There are a multiplicity of such regulations which reflect local preferences and styles. This regulatory authority has not led to the elimination of such advertising. Nor has it constrained the ability of the industry to commission national advertising compaigns.

The earlier version of this legislation, introduced into the 101st Congress (S. 1883) would have repealed entirely the current preemption on state regulation of tobacco advertising. Concerns were expressed about the impact of this proposal on national advertising compaigns and on advertising in magazines and newspapers. This led to concerns on the part of some groups about whether this would lead to violations of First Amendment freedoms. Though the sponsors of the bill and many Constitutional expert felt clear that this never was the case, the new version of this amendment which only partially repeals the preemption has not raised these concerns. The Committee expects that efforts to regulate advertising will be consistent with the First Amendment to the Constitution.

The Committee notes that the parital repeal under Section 2758 is not to be construed as a precedent or expression of general legislative policy adversely affecting any present or future federal preemption concerning any other products in or affecting interstate commerce which are regulated as to public health and safety by the federal government. For example, the Food and Drug Administration (FDA) regulates the safety, claims, labeling, and packaging of prescription and nonprescription drugs, and medical devices and exercises stringent federal testing, labeling, and effectiveness standards applied to prescription and nonprescription drugs and medical device products. Preemption in those areas is far different from tobacco where the federal government does not establish safety or health requirements for, or regulate the safety of, tobacco products.

The greatest opportunity we have in this country for reducing the health effects of smoking is to increase our efforts to discourage tobacco use among young people. Over 46 million children are enrolled in our nation's schools. Schools provide a natural vehicle for reaching students at an early age to provide education and services which can prevent many health-related problems.

S. 1088 authorizes support for comprehensive school based health education. This support should be in addition to sums that are already spent for this purposes through the Centers for Disease Control. Such programs have also been demonstrated to have a consistently positive effect in delaying the onset of tobacco use. Studies show that the onset of smoking among seventh and eighth grade students was delayed for several years in 20–50 percent of students receiving a prevention program. By delaying smoking onset, these programs reduce the possibility that these adolescents will become regular smokers and made it easier for those adolescents who do start to smoke to quit. The positive effects of school programs on delaying the onset of smoking is a strong argument for widespread program adoption.

Several studies have shown a reduction in prevalence of smoking among students exposed to a smoking prevention program.

This Act also changes one of the current rotating warning labels from "Surgeon General's Warning: Cigarette Smoke Contains Carbon Monoxide" to "Surgeon General's Warning: Smoking is Addictive. Once you start you may not be able to stop." This provision is based on one of the principle recommendations of the 1988 Surgeon General's Report, "The Health Consequences of Smoking: Nicotine Addiction."

The 1988 Surgeon General's report was dedicated to an exhaustive review of tobacco use as an addiction. The Report concluded that: cigarettes and other forms of tobacco are addicting, nicotine is the drug in tobacco that causes addiction, and the pharmacologic and behavioral processes that determine tobacco addiction are similar to those that determine addiction to drugs such as heroin or cocaine. The report recommended that a health warning on addiction should be rotated with the other warnings now required on cigarettes and smokeless tobacco packages and advertisements.

Tobacco in the Drug-Free Schools Act

The Surgeon General's 1988 report on "The Health Consequences of Smoking: Nicotine Addiction" demonstrates "conclusively that cigarettes and other forms of tobacco are addicting in the same sense as are drugs such as heroin and cocaine." Because the addictive nature of nicotine makes it very difficult to stop smoking, the Committee believes that preventing adolescents from ever beginning to smoke is essential.

Tobacco use is generally not perceived to be as serious in nature as is the use of illicit drugs. Nor is tobacco associated with the social disruption, crime and violence which are often related to the use of illicit drugs. However, the health implications of tobacco use remain far more severe. Nearly 400,000 people die each year in the United States from tobacco-related diseases. This number is far

greater than the number of deaths from alcohol and drug use and all related fatalities combined. Given the magnitude of the problem and the addictive nature of nicotine in tobacco products, the Committee believes it is imperative that information on the health effects of tobacco use be included in the education programs of the Drug Free Schools and Communities Act of 1986. Consistent with the Committee's view the curricula which have resulted from that program do already include information about the problem of tobacco use, as one of the basic educational tenents. In that regard, the Committee supports the current curricula.

The Committee believes that schools are one of the most appropriate arenas for conveying information since they provide access to nearly all children at an age youth enough to have significant potential for preventing the onset of tobacco use. To be most effective in preventing children from using tobacco products, it is important to reach them while they are young—50 percent of all smokers being at age 14. The Committee believes that all children should be free from the influence of and exposure to tobacco, particularly while in school. The National Commission on Drug-Free Schools is preparing recommendations on school policies that will encourage the establishments of drug free schools. This legislation would elicit recommendations on policies that also encourage the establishment and maintenance of smoke-free schools.

Recent studies by the U.S. Environmental Protection Agency indicate that 3,800 people die in the U.S. each year from lung cancer caused by exposure to environmental tobacco smoke and 16,000 die from all cancers. Other recent evidence concludes that passive smoke causes 37,000 heart disease deaths each year in this country. For every 8 deaths attributed to smoking, there is one additional death attributed to passive smoking. The Committee believes that policies against smoking on school grounds or at school-sponsored events should be established and enforced. Clean indoor air is an important component of protecting everyone's health, particularly those young children whose respiratory systems are still developing.

The Committee believes that equally important as the absence of involuntary smoke to the development and health of children, is the presence of visible, nonsmoking role models for all those impressionable children who will be making a decision about whether to smoke during the school years. A school environment where teachers, parents, coaches and peers do not smoke can have a critical influence over these young people by providing a consistent and inescapable message that smoking is unhealthy behavior.

The Committee believes that (schools) should play an active role in effctive tobacco education. To encourage States to establish smokefree school environments, this bill will provide incentive grants to those States which establish policies creating smokefree elementary and secondary schools. These grant funds may be used to educate faculty, administrators, parents and students about the health effects of environmental tobacco smoke, the addictive nature of nicotine, and the importance of preventing all forms of tobacco use. Specific activities may include speakers, media events, development and dissemination of materials, appropriate social events, and other activities.

V. History of the Legislation

The Tobacco Product Education and Health Protection Act of 1991, S. 1088, a bill to amend the Public Health Service (PHS) Act to establish a Center on Tobacco and Health, to inform the public concerning the hazards of tobacco use, to provide for disclosure of additives to such products, to require that information concerning such products be provided to the public, and for other purposes, was introduced by Senator Kennedy on May 16, 1991, and was referred to the Labor and Human Resources Committee. The bill is an updated and technically improved version of S. 1883, introduced on November 15, 1989, and later ordered to be reported out of the Labor and Human Resources Committee on May 16, 1990 as an original bill, S. 2795.

There are two provisions in S. 1088 which were not in S. 1883 in any form. The first concerns the responsibilities of the Center for Tobacco and Health. There is a new requirement for the Center to provide information about the hazards of tobacco use and about strategies for research, education, prevention, and cessation of tobacco use to foreign countries where tobacco use, or mortality from tobacco use, is on the title.

The second provision added to S. 1088, not found in S. 1883, is "Section 2752. Warning Labels." This section requires that the rotating warning labels on tobacco products be moved from the sides of the packages to the front and back of the package and be increased in size to 20% of the surface area.

The Committee Held hearings on the bill on February 20 and April 3, 1990. The following persons appeared as witnesses at the February 20 hearing: Senator Frank R. Lautenberg; Senator Bill Bradley; and Representative Richard J. Durbin; Dr. Louis W. Sullivan, Secretary, Department of Health and Human Services; Dr. Alan Blum, Baylor College of Medicine; Charles O. Whitely, The Tobacco Institute; Thomas Hale Boggs, Jr., the Freedom to Advertise Coalition; Scott D. Ballin, the Coalition on Smoking OR Health; Sister Mary Madonna Ashton, Minnesota Commissioner of Health.

The following witness appeared at the April 3 hearing: Representative Thomas A. Luken; Representative Stephen L. Neal; Officer Bruce R. Talbot, the Woodridge, Illinois, Police DARE (Drug Abuse Resistance Education) Program; John J. Jocye, the Maine Grocers Association; Peter Strauss, the National Association of Tobacco Distributors; Dr. Gary Williams, the American Health Foundation; John Rupp, Covington & Burling; Burt Neuborne, the Freedom to Advertise Coalition; Vincent A. Blasi, Columbia University School of Law; Morton H. Halperin, the American Civil Liberties Union; Floyd Abrams, The Tobacco Institute.

The Committee met on June 16, 1991 and ordered the bill (S. 1088) reported, without amendments.

VI. Committee Action and Votes in Committee

The Tobacco Product Education and Health Protection Act of 1991 was brought before an Executive Session of the Labor and Human Resources Committee for mark-up on June 16, 1991. There were no amendments offered. The measure was approved on a voice vote. One objection was voiced.

VII. Cost Estimates

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 28, 1991.

Hon. Edward M. Kennedy,
Chairman, Committee on Labor and Human Resources,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1088, the Tobacco Product Education and Health Protection Act of 1991, as ordered reported by the Senate Committee on Labor and Human Resources on June 19, 1991.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer.

Congressional Budget Office—Cost Estimate

1. Bill number: S. 1088.
2. Bill title: Tobacco Product Education and Health Protection Act of 1991.
3. Bill status: As ordered reported by the Senate Committee on Labor and Human Resources on June 19, 1991.
4. Bill purpose: To amend the Public Health Service Act to establish a center for tobacco products, to inform the public concerning the hazards of tobacco use, to provide for disclosure of additives to such products, and to require that information be provided to the public concerning such products, and for other purposes.
5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1991	1992	1993	1994	1995
Estimated authorization levels:					
Center for Tobacco Products	25	26	27	....	....
Information campaign grants	50	52	54	....	....
Model State grants	25	26	27	....	....
Workplace tobacco use grants	5	5	5	....	....
Office of Regulatory Affairs	7	7	8	8	8
Smoke free schools grants	5	5	5	....	....
Report	(1)	....	....	....	....
Total estimated authorization levels	118	122	127	8	8
Estimated outlays:					
Center for Tobacco Products	13	23	27	13	3
Information campaign grants	27	46	53	25	5
Model State grants	13	23	27	13	3
Workplace tobacco use grants	3	5	5	2	1
Office of Regulatory Affairs	6	7	8	8	8
Smoke free schools grants	1	4	5	5	1
Report	(1)	....	....	....	....

[By fiscal years, in millions of dollars]

	1991	1992	1993	1994	1995
Total estimated outlays	63	108	124	66	21

[1] Details in this table may not add to totals because of rounding

The costs of this bill fall within budget functions 500 and 550.

Basis of estimate: This bill would establish a center for tobacco products, and create a number of grant programs to educate the public on the hazards of tobacco products in order to discourage the initiation of, and encourage the cessation of, tobacco use.

The bill specifies the authorization levels for the grant program to reduce tobacco use in the workplace. The bill also provides specific authorization amounts for fiscal year 1992 and such sums as may be necessary for fiscal years 1993 and 1994 for the center of tobacco products, the information campaign grant program, the model state grant program, and the smoke free school grant program. CBO estimated the 1993 and 1994 authorization levels for these activities by increasing the respective 1992 authorization by projected inflation.

The bill would require the Secretary of Health and Human Sevices (HHS) to establish, or to designate an existing entity as; the Office of Regulatory Affairs, which would insure against misbranded or adulterated tobacco products through examinations and investigations. The bill does not specify an authorization level for this activity. Based on the costs of the Department of Agriculture's imported tobacco inspection program. CBO estimates that it would cost approximately $7 million dollars to establish and maintain an office that inspected tobacco products within the United States.

Within one year of enactment, the Secretary of HHS would have to study and report on the use of pesticides on tobacco, and the effect of those pesticides on human health. CBO estimates that the study and report would cost less than $500,000 in fiscal year 1992.

This estimate assumes that all authorizations are fully appropriated at the beginning of each fiscal year. Outlays are estimated using spendout rates computed by CBO on the basis of recent program data.

6. Pay-as-you-go considerations: The Budget Enforcement Act of 1990 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. None of the provisions of S. 1088 would affect direct spending or receipts. Therefore, this bill as no pay-as-you-go implications.

7. Estimated cost to State and local government: None.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Karen Graham and Deborah Kalcevic.

11. Estimate approved by: Charles E. Seagrave, (for James L. Blum, Assistant Director for Budget Analysis).

VIII. Regulatory Impact Statement

This legislation confers new authority on the Secretary of Health and Human Services for the regulation of additives to tobacco products. There are two parts to the authority. The first is the disclosure to the public on the package, or in a package insert, of the additives to tobacco products. Flavorings, fragrances, and colorings may be disclosed as such without being specifically itemized. The Committee anticipates that sample packages or package inserts will be submitted to the Secretary within the required period of time. Manufacturers of new brands will submit such samples prior to brand release.

The Second part of the authority is disclosure to the Secretary and the power to require the restriction or deletion of any given additive which is judged to significantly increase the risk of the product. A set of procedures and protocols will need to be developed to collect and evaluate the data by which any such conclusion may be reached and to notify the company effected if restrictions or deletions are required.

The legal basis for the new authority is carefully patterned after that currently held by the Food and Drug Administration. As such, there should be sufficient existing expertise within the Public Health Service with which to plan and construct the organization that will be required to administer this authority. An Office of Regulatory Affairs is vested with these responsibilities. It may be created or designated from among existing entities.

This bill also requires more prominent warning labels on tobacco product packages. While, prior law gave responsibility to the Secretary of the Department of Health and Human Services (DHHS) to receive and handle information about additives to tobacco products, the regulations governing rotating warning labels were previously written by the Federal Trade Commission (FTC). This bill changes one of the four rotating warning labels and includes new requirements for size and location for all the rotating labels. The regulations which implement these changes could be written and enforced by the DHHS.

IX. Section-by-Section Analysis

Section 1 of the bill provides that this Act may be cited as the "Tobacco Product Education and Health Protection Act of 1991."

Section 2(a) includes the findings of the Congress relating to the bill:

Despite a steady decline in tobacco consumption, 52,000,000 Americans still use tobacco products annually;

Tobacco use causes nearly 434,000 deaths each year in the U.S., over 1,000 deaths a day;

Tobacco use is the most important cause of death and illness in the U.S., causing one-sixth of all deaths annually;

In 1985, the private and public sectors in the U.S. spent approximately $22 billion on smoking-related illnesses and absorbed $43 billion in economic losses from such illnesses;

Over 50 percent of all smokers begin using tobacco by age 14, and 90 percent of all smokers begin before age 20;

Nicotine-containing tobacco products are addictive;

Most young people initiate tobacco use and become addicted before they are sufficiently informed or mature enough to make an informed choice concerning their use;

According to the National Commission on Drug Free Schools, the tobacco industry contributes significantly to the experimentation with tobacco and the initiation of regular tobacco use by children and young adults through its advertising and promotion practices;

In 1988 the tobacco industry spent $3.25 billion on the advertising and promotion of tobacco products, ranking such products among the most heavily advertised and promoted products in the U.S.;

The tobacco industry claims that the purpose of advertising is to influence consumer brand selection, but only 10 percent of tobacco users switch brands each year;

Convincing evidence demonstrates that tobacco advertising is predominantly directed at market expansion or retention or both;

The tobacco industry must attract 6,000 new smokers daily to replace those who stop smoking or who die of smoking-related diseases and other causes;

Tobacco product advertising and promotion are intended to appeal to the youth market through advertisements that suggest a strong association between smoking and physical fitness, attractiveness, success, adventure, and independence, and that have influence on minors, who are more vulnerable to image-based advertising;

Serious gaps in knowledge about the harmful effects of tobacco use persist in both minors and the adult population, with surveys showing that large numbers of persons are unaware that smoking causes lung cancer, heart disease, and stillbirths in pregnancy;

Education is effective in preventing and halting the use of tobacco products;

The proportion of smokers among the most educated adults is less than half that among the least educated adults;

The highest percentage of smoking is among those individuals with the least amount of education, including young citizens, blue-collar workers, high school dropouts, and minorities;

The total resources of the major voluntary organizations that sponsor educational activities on smoking have never exceeded 2 percent of tobacco industry expenditures for the promotion of tobacco;

Children and teenagers should be informed about the dangers of smoking and be discouraged from initiating the use of tobacco;

The American public and groups with highest prevalence of tobacco use should be informed about the dangers of tobacco;

Although most States prohibit the sale of tobacco products to minors, such laws are not uniformly enforced;

In recent years, there have been efforts in some States to improve the enforcement of existing laws which prohibit the sale of tobacco products to minors;

Minors who live near the borders of States which enforce such laws still may cross into other States to obtain tobacco products;

Cooperative Federal-State efforts will encourage more effective action to limit the sale of tobacco products to minors; and

No Federal law currently requires public disclosure of the numerous additives in tobacco products.

Section 2(b) lists the following purposes of this legislation:

Help educate citizens to prevent initiation and encourage cessation of tobacco use;

Inform the public about the harmful effects of tobacco products;

Provide that segment of the public that has the greatest prevalence of tobacco use, or is subject to the greatest risk from tobacco use, with image-based educational messages that present accurate information about the hazards of tobacco use as an alternative to the misleading images and information contained to industry advertising;

Support State efforts to improve educational programs for the prevention and cessation of tobacco use;

Support State efforts to strengthen laws limiting the sale of tobacco products to minors;

Determine the risk of additives of tobacco products to individual health and establish Federal regulatory authority over such additives;

Section 3(a) of the bill amends the PHS Act by inserting a new title XXVII—

Tobacco Health and Education Programs. Subtitle A of the new title XXVII provides for the establishment of a Center on Tobacco and Health. A new section 2701 of the Act directs the Secretary to establish the Center within the Centers for Disease Control (CDC). The Secretary, acting through the Director of CDC shall—

Educate the public concerning the health consequences of using tobacco products, provide outreach services to youth, and promote cessation of tobacco product use through the provision of technical and material assistance to States, workplaces, and the media;

Support research efforts concerning patterns of tobacco use and cessation;

Provide assistance to States to enhance their efforts to enforce existing State laws concerning the sale of tobacco products to minors within the State;

Coordinate the education and research activities of the Federal Government with regard to tobacco products;

Document the additives that are contained in tobacco products, determine the additives that represent a health risk, and ensure the disclosure of such information to the public in a manner that assures the protection of proprietary information;

Provide information about the hazards of tobacco use and about strategies for research, education, prevention, and cessation of tobacco use to foreign countries where tobacco use or mortality from tobacco use is on the rise; and

Carry out the programs established by the Secretary under this title.

Section 2701(c) authorizes the Secretary, through the Director of CDC, to enter into contracts and agreements with agencies within and outside of the PHS to carry out this title. Section 2701(d) au-

thorizes appropriations of $25 million for FY 1992 and such sums as may be necessary for each of FY 1993 and 1994 to carry out this section.

Section 2702 of the new title XXVII directs the Secretary, through the Director of CDC and in cooperation with nonfederal organizations, to carry out educational and research activities, including:

The preparation and distribution of materials to educate the public concerning the health effects of using tobacco products;

The preparation of public service announcements and the preparation and implementation of educational campaigns (including paid advertising) to inform specific populations, including youth and the general population, of the health effects of using tobacco products and the opportunities for prevention and cessation of such use;

The provision of information to film makers, broadcast media managers, and others regarding the role of the media in promoting tobacco use behavior;

The conduct of research on patterns of tobacco product use, initiation and cessation, and effective methods for disseminating such information;

The development of plans to effectively provide outreach services to high risk groups and youth with such information; and

The conduct of reviews of the effectiveness of information required to be contained in rotating warning lebels and the undertaking of research to establish how to improve the effectiveness of such labels.

Subtitle B of the new title XXVII is entitled "Anti-Smoking Programs." Under Chapter 1—Public Information Campaigns—of this subtitle, section 2711 authorizes grants for public information campaigns. Section 2711(a) directs the Secretary, through the Director of CDC, to make grants to public or nonprofit private entities, or enter into contracts or cooperative agreements with private entities, to conduct public information campaigns concerning the use of tobacco products. Subsection (b) describes the activities that will be supported under this chapter, including development of a public information campaign with public service announcements, paid educational messages for print media, public transit advertising, electronic broadcast media, and any other appropriate mode of conveying information. Such activities shall focus on discouraging youth and nonusers from using tobacco products, encourage cessation of tobacco use, and counter messages in tobacco advertisements. Activities shall focus on one of more of the specific groups described in (c).

Subsection (c) of section 2711 directs the Secretary, through the Director of CDC, to publish criteria for awarding grants. Criteria shall ensure that the applicant—

will conduct activities to educate one or more communities or groups with high prevalences of tobacco use and high health risks from tobacco use, specifically youth, school dropouts, pregnant women, minorities, blue collar workers, and low income individuals;

has a record of high quality campaigns of a comparable type; and

has a record of high quality campaigns that educate the population groups specified above.

Subsection (d) requires the Secretary, in awarding grants, contracts, and agreements under this chapter, to give preference to applicants that will conduct activities most likely to encompass an audience that includes several of the groups identified above. In awarding grants, contracts, or agreements, the Secretary shall attempt to distribute them so that all of the groups identified above are reached with diverse media. Single awards will not be required to reach all groups or use all media.

Section 2712 describes application requirements for public information campaign grants. No grant, contracts, or cooperative agreement shall be made or entered into unless the application meets such requirements. An application must provide such agreements, assurances, and information, be in such form and submitted in such manner as the Secretary shall prescribe, and shall contain:

A complete description of the plan of the applicant for the development of a public information campaign, including—

An identification of the specific audiences to be educated by the campaign including one or more communities or groups with high prevalences of tobacco use and high health risks from tobacco use, such as youth, school dropouts, minorities, blue collar workers, pregnant women, and low income individuals;

An identification of the media to be used in the campaign and the geographic distribution of the campaign;

A description of plans to test market the campaign with a relevant population group and in a relevant geographic area; and

An assurance that effectiveness criteria will be implemented prior to the completion of the final plan including an evaluation component to measure the overall effectiveness of the campaign; and

A complete description of the kind, amount, distribution, and timing of informational messages and an assurance that the applicant will work with any media organizations or other groups with which such messages are placed to ensure that such organizations or groups will not lower the current frequency of public service announcements.

Section 2713 authorizes appropriations of $50 million for FY 1992 and such sums as may be necessary in each of FY 1993 and 1994 for grants, contracts, or agreements under this chapter.

Chapter 2 of Subtitle B authorizes Model State Leadership Incentive Grants for Anti-Tobacco Use Intervention. Section 2715(a) directs the Secretary, through the Center, to designate not less than 10 nor more than 20 States as model States under subsection (b) and make grants to each State to assist in meeting the costs of improving State leadership concerning activities that—

Will prevent the initial use of tobacco products by minors;

Will encourage the cessation of the use of tobacco products among youth and other residents of the State, with particular attention directed towards those individuals and groups who

are at high risk and suffer high prevalences of tobacco use, including school dropouts, minorities, low-income individuals, pregnant women, and blue collar workers; and

Will implement and enforce a prohibition on the sale of tobacco products to minors.

Subsection (b) of section 2715 provides that, to be designated a model State, a State shall—

Have in effect a law that prohibits the sale of tobacco products to individuals under age 18;

Seek to improve the enforcement of such law;

Have in effect a law or regulation intended to reduce the use of, or access to, cigarette vending machines by minors under age 18;

Seek to improve the enforcement of such law or regulation; and

Have in effect, or seek to establish, a law or regulation that prohibits the provision of free samples of tobacco products.

Section 2716 provides that a State application for designation as a model State—

Includes a designation of a lead agency in the State that will work with the Center, and contain assurances that such agency—

Has experience in matters that affect the public health;

Has expertise regarding health effects and use of tobacco products;

Provide direct services for smoking cessation or referrals for such services;

Administers activities intended to prevent the initiation of use of tobacco products by minors under age 18, and by other individuals;

Will have a lead office or division that will be chiefly responsible for such functions; and

Provide personnel sufficient to staff the lead office or division;

Provides assurances that as part of a program to improve State enforcement of existing laws on sale to minors the State will—

Establish a mechanism for the reporting of citizen or other complaints to the responsible lead office or division concerning retail establishments that sell tobacco products to minors who are in violation of State law;

Establish a program to make the public aware of the lead office or division;

Establish a procedure by which the State may make a finding or a presumption that a retail establishment has a pattern or practice of selling tobacco products to minors in violation of State law, which includes—the provision of both of reasonable notice to the retail establishment and its owner or operator, and of the opportunity to respond through a hearing;

Establish a procedure for the lead State agency to report periodically to the Center regarding the system developed above; and

Establish a procedure for the lead agency to report periodically to the Center regarding the implementation of these provisions.

Includes a complete description of the type of programs that will be established or assisted by or through the applicant, and a statement of goals, objectives, and timetables of such programs or activities that are consistent with the purposes of section 2715;

Specifies how the State will meet the criteria in section 2717;

Includes copies of State laws and regulations described in sections 2715 (b)(1) and (3); and

Be in such form, submitted in such manner, and contain such information as the Secretary shall require, including such other information as the Secretary may by regulation prescribe.

Section 2717 directs the Secretary, acting through the Director of CDC, to establish criteria for awarding grants under this chapter, including requirements that the State must provide—

Evidence that the State has made efforts to discourage smoking and other tobacco use among the youth residing in such State;

Evidence of the need of the State for the assistance that is requested as reflected in the prevalence of the use of tobacco in the State, especially among the populations described in section 2715(a)(2) above, and assurances that the State intends to concentrate its efforts on such populations;

Evidence of the need of the State for the assistance that is requested as reflected in the necessity for the development of statewide expertise in the planning of, and implementation of antitobacco use interventions;

Evidence of cooperative arrangement that the applicant has, or will enter into, with other entities that will participate in the activities established or assisted under the grant.

Section 2718 directs the Center to provide to designate model States, on request—

Model printed materials for distribution to retail establishments concerning the health hazards and the illegality of the sale of tobacco products to minors;

Support for, and assistance in, the planning of meetings, conferences, and conventions to educate retail establishments concerning the health hazards associated with tobacco products, the addictive nature of tobacco products, and State laws that prohibit the sale of tobacco to minors;

Technical assistance in the development of reporting systems to identify specific retail establishments and retail chains that consistently sell tobacco products to minors in violation of State laws;

Assistance in the development of notification systems to make specific retail establishments aware that such establishments are acting consistently in violation of State law;

Model notices to be distributed to retail establishments concerning the awareness of State authorities and of the Center of the continued sale of tobacco products to minors in violation of State law; and

Information on the procedures to be followed by the State to obtain assistance from the Office of Regulatory Affairs to enforce State laws prohibiting the sale of tobacco products to minors.

Section 2719(a) authorizes appropriations of $25 million for FY 1992 and such sums as may be necessary for each of FY 1993 and FY 1994 for grants under this chapter. Subsection (b) provides that funds under this chapter shall be distributed so that no State shall receive more than $2 million for each fiscal year under this section.

Chapter 3 of Subtitle B of title XXVII authorizes a program of Education to Decrease Tobacco Use in the Workplace. Section 2721 directs the Secretary, through the CDC, to make grants to public and nonprofit entities and enter into contracts or cooperative agreements with private entities (including employer organizations and employer and employee consortia) for educational activities to reduce the incidence of tobacco use among workers with high prevalence of tobacco use. Such grants or contracts shall be used for meeting all or part of the cost of activities that will prevent the initiation, and encourage the cessation, of the use of tobacco products among workers and their families. Priority will be given to applicants that educate groups with high prevalence of tobacco use.

Section 2722(a) provides that assistance provided under this chapter shall be used for—

Education to promote the cessation of tobacco use among workers who have high prevalences of tobacco use;

Information and activities to provide family members of workers with education concerning the health consequences of tobacco use;

Training and education to develop the expertise of a health educator or other personnel who will perform the activities described in this subsection for workers and their families; and

The development of audio, visual, or print materials that will facilitate any of the activities described in this subsection when such appropriate materials are not otherwise available.

Section 2722(b) directs the Secretary, through the Director of CDC, to establish criteria for awarding grants under this chapter including requirements that the applicant provide to the Secretary—

evidence of—

The potential for success of the proposed plan of the applicant; and

The existence of any cooperative arrangements with other entities that will participate in the proposed plan;

An agreement that the activity is implemented with the cooperation of the employer; and

Any other information that the Secretary specifies.

Section 2723 provides that no grant, contract, or cooperative agreement shall be made under this chapter unless an application has been submitted to, and approval by the Secretary. An application shall be submitted in such form and such manner as the Secretary shall prescribe and shall contain—

A complete description of the type of educational activities that the applicant intends to carry out with assistance provided under this chapter, including—

A description of the activities that are designed to establish an ongoing antitobacco program that may include working cooperatively with existing antitobacco programs in the community or State; and

An assurance that such activities will demonstrate a concentration of effort to change tobacco use behavior in groups identified in section 2721 and will include one or more of the activities described in section 2722;

An assurance by the applicant of its ongoing commitments to support the antitobacco use activities after the period of the grant, contract or cooperative agreement has expired;

A description of the manner in which the applicant will meet the criteria specified in section 2722; and

Such other information as the Secretary may prescribe by regulation.

Section 2724 authorizes appropriations for grants, contracts, or agreements under this chapter of $5 million for each of FY 1992 through 1994.

Chapter 4 of subtitle B of the new title XV is entitled "Information Regarding Cigarette Smoking." Section 2726 of this chapter includes definitions for the following terms used in the chapter.

"Committee" means the committee established under section 2727(c) below, or the committee established under section 3(b) of the Comprehensive Smoking Education Act as such section existed before the date of enactment of this section.

"United States," when used in a geographical sense, includes the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and the installations of the Armed Forces.

Section 2727 directs the Secretary to establish and carry out a program to inform the public of the dangers to human health presented by cigarette smoking. Subsection (b) requires the Secretary, in carrying out this program, to—

Conduct and support research on the effects of cigarette smoking and of passive smoke on human health and develop materials for informing the public of such effects;

Coordinate all research and educational programs and other activities within the Department of HHS that relate to the effect of cigarette smoking and passive smoke on human health and coordination, through the Committee with similar activities of other Federal agencies and of private agencies;

Establish and maintain liaison with appropriate private entities, other Federal agencies, and State and local public agencies concerning activities relating to the effect of cigarette smoking and passive smoke on human health;

Collect, analyze, and disseminate (through publications, bibliographies, and otherwise) information, studies, and other data relating to the effect of cigarette smoking and passive smoke on human health, and develop standards, criteria, and methodologies to improve information programs related to smoking and health;

Compile and make available information on State and local laws relating to the use and consumption of cigarettes;

Establish an outreach program to inform individuals under age 18 about the health consequences of smoking; and

Undertake any other additional information and research activities that the Secretary determines necessary and appropriate to carry out this section.

Subsection (c) of section 2727 directs the Secretary to establish an Interagency Committee on Smoking and Health to carry out the coordination and liaison function described in subsection (b) above. The subsection provides for the composition of the Committee, the designation of a Chairperson, expenses for Committee members, and other information for the Committee.

Subsection (d) of section 1527 requires the Secreatry, not later than January 1, 1991, and biennially thereafter, to prepare and submit, to the appropriate congressional committees, a report containing—

An overview and assessment of Federal activities undertaken to inform the public of the health consequences of smoking and passive smoke and the extent of public knowledge of such consequences;

A description of the activities of the Secretary and the Committeee under subsection (a);

Information regarding the activities of the private sector taken in response to the effects of smoking on health; and

Such recommendations as the Secretary may consider appropriate.

Section 2728 authorizes a program of public education regarding smokeless tobacco. Subsection (a) directs the secretary to establish and carry out a program to inform the public of dangers to human health resulting from the use of smokeless tobacco products. In carrying out such program, the Secretary, through the Center, shall—

Develop educational programs and materials and public service announcements, on the dangers to human health from the use of smokeless tobacco;

Make such programs, materials, and announcements available to States, local governments, school systems, the media, and such other entities as the Secretary determines appropriate;

Conduct and support research on the effect of smokeless tobacco and health;

Collect, analyze, and disseminate information on smokeless tobacco and health.

Subsection (a) also requires the Secretary to consult with the Secretary of Education, medical and public health entities, consumer groups, representatives of smokeless tobacco product manufacturers, and other appropriate entities in developing programs, materials and announcements.

Subsection (b) of section 2728 authorizes the Secretary to provide technical assistance and make grants to States—

To assist in the development of programs, materials, and announcements on the dangers to human health from smokeless tobacco use;

To assist in the distribution of such programs, materials, and announcements through the States; and

To assist States in enacting laws to establish 18 as the minimum age for the purchase of smokeless tobacco.

Section 2729 directs the Secretary, not later than January 1, 1991, and biennially thereafter, to prepare and submit, to the appropriate committees of Congress, a report containing—

A description of the effects of health education efforts on the use of smokeless tobacco products;

A description of the use by the public of smokeless tobacco products;

An evaluation of the health effects of smokeless tobacco products and the identification of areas appropriate for further research; and

Such recommendations for legislation and administrative action as the Secretary considers appropriate.

Chapter 5 of subtitle B of title XXVII describes General Provisions of the subtitle.

Section 2735(a) provides for the amount and method of payment of a grant, contract, or agreement awarded under this subtitle. Section 2735(b) provides for maintenance of effort under grants, contracts, or agreements awarded under this subtitle. Subsection (c) authorizes the Secretary to reduce the amount of a grant, contract, or agreement under this subtitle, at the request of a recipient, by the value of supplies or equipment furnished to the recipient by the Secretary, by the amount of pay, allowances, travel expenses, or other incurred costs of a Federal officer or employee detailed to the recipient. Subsection (d) of section 2735 requires each recipient of a grant, contract, or agreement under this subtitle to keep appropriate records as determined by the Secretary. Subsection (e) provides for the Secretary and the Comptroller General of the United States to have access to any books, documents, papers, and records of a recipient under this subtitle, for the purpose of conducting audits and examinations.

Subtitle C of title XXVII of the PHS Act as authorized by the bill is entitled "Prohibited Acts, Enforcement, and Additives". Under Chapter 1—Prohibited Acts and Enforcement—Section 2741(a) lists the following prohibited acts:

Failure of a manufacturer to comply with section 2751;

The introduction or delivery for introduction into interstate commerce of any tobacco product that is adulterated or misbranded;

The adulteration or misbranding of any tobacco product in interstate commerce;

The receipt in interstate commerce of any tobacco product that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

The using of any person to that person's own advantage, or revealing, other than to the Secretary or other Department officers or employees, or to the courts when relevant in a judicial proceeding under this title, any information acquired under authority of the title concerning any method or process that as a trade secret is entitled to protection. This is not to be construed to prohibit disclosure of information to Congress;

The representation or suggestion that any approval of any tobacco product is in effect under this title or any other Federal law or regulation;

The failure of the manufacturer of a tobacco product to maintain for transmittal, or to transmit, to any individual who makes a written request for information as to such product, true and correct copies of all printed matter that are required to be included in or on any package of a tobacco product.

The failure to make reports required, the failure to retain records required, or the failure to meet requirements prescribed, under this title.

The sale of tobacco products to minors in a State designated as model State under section 2715.

Section 2741(b) directs the Secretary, in carrying out this subtitle, to establish within the PHS, or designate an existing entity in the PHS as, an Office of Regulatory Affairs to coordinate its work with other offices and agencies of the Federal Government.

Section 2742 provides for enforcement of the provisions of this title. Subsection (a) provides that any person who violates the provisions of this title shall be subject to the penalties described in subsection (d). Subsection (b) provides that, in a State designated as a model State under section 2715, any retail establishment which has, according to the State, been engaged in a pattern or practice of selling tobacco products to minors in violation of State law may be denied delivery of tobacco products by all distributors of such products in that State for a period not to exceed 60 days. Subsection (c) provides for a ban on shipping of tobacco products to any retail establishment found to be selling tobacco products to minors.

Subsection (d) gives the district courts of the United States jurisdiction to enforce violations of section 2741 in the same manner as described under specific sections of the Federal Food, Drug, and Cosmetic Act with respect to violations of section 301 of such Act, except that any fines shall be calculated in accordance with the Criminal Fine Improvement Act of 1987 and no showing of interstate commerce shall be required.

Subsection (e) of section 2742 provides for the enforcement of this title by civil action against a retail establishment or distributor of tobacco products.

Section 2743 authorizes the Secretary to promulgate regulations to carry out this subtitle. Chapter 2 of Subtitle C deals with Additives; Ingredients; Misbranded and Adulterated Tobacco Products. Section 2715(a)(1) makes it unlawful for any person to manufacture, import, or package, any tobacco product brand name unless the person has provided to the Secretary, within specified time periods, a complete list of—

All brands of such tobacco products that shall include the levels of tar, nicotine, and carbon monoxide for each brand;

Each tobacco additive used in the manufacture of each tobacco product brand name that the person manufactures, imports, or packages; and

For each additive, the range of quantities used.

Section 2751(a)(2) establishes time periods for reporting requirements. With respect to a tobacco product brand name manufactured, imported, or packed on the date of enactment, the manufacturer, importer, or packager is required to provide to the Secretary the required list not later than 3 months after the date of enactment. With respect to a produce brand name manufactured, imported, or packed after the date of enactment, the manufacturer, importer, or packager is required to provide to the Secretary the required list at least 3 months prior to the date on which the person commences to manufacture, import, or package such product brand name.

Section 2751(b) requires any manufacturer, importer, or purchaser of a tobacco product to provide the Secretary, on request, with information regarding the impact of such additives on health. Subsection (c) authorizes the following disclosure requirements—

Not later than January 1, 1991, the Secretary is required to prescribe requirements for manufacturers to place information on tobacco product packages or in package inserts, that are provided with such products, so that the public will be adequately informed of the tobacco additives contained in any brand or variety of tobacco products except that spices, flavorings, fragrances, and colorings may be so designated without naming each.

If the Secretary determines that any additive, regardless of the amount of such additive, either by itself or in conjunction with any other additive, significantly increases the risk to human health, the Secretary may require that such levels of the additive in the tobacco product be reduced or that it be prohibited from use—

Such determination shall be made by regulation;

Prior to issuing such a regulation, the Secretary is required to provide notice and an opportunity for comment pursuant to section 553 of the title 5, U.S. Code, except that the time for such comment shall not be less than 60 days. In the event that it appears that material facts may be in dispute concerning the proposed regulation, the Secretary is required to provide appropriate opportunities for presentation of evidence and for cross-examination of witnesses as circumstances require either before the Secretary or a Department officer or employee designated by the Secretary.

Section 2751(d) provides that judicial review of a determination under this section be governed by and in accordance with section 409(g) of the Federal Food, Drug, and Cosmetic Act, except that the requirements of paragraph (3) shall not apply.

Section 2752 makes it unlawful to manufacture, import, or package, any tobacco product brand name uness the warning labels required in section 4(a)(1) of the Federal Cigarette Labeling and Advertising Act shall—

Appear on the two most prominent sides of the product package;

Be in a size which is not less than 20 percent of the side on which the label is placed; and

Include letters in a height and thickness which assures that the letters in the space provided for the statement will be no less legible, prominent, and conspicuous in size than other

matter printed on the side of the package on which the label statement appears.

Section 2753 provides that a tobacco product shall be considered to be misbranded if it is not labeled in accordance with the requirements prescribed by the Secretary under section 2751(c)(1).

Section 2754 provides that a tobacco product shall be considered to be adulterated—

If the level of any tobacco additive in the product is in violation of section 2751(c)(2)(1);

If it contains any additive that has been prohibited from use under section 2751(c)(2)(A);

If it contains in whole or in part any filthy, putrid, or decomposed substance; or

If it has been prepared, packed, or held under unsanitary conditions where it may have become contaminated with filth or where it may have been rendered more injurious to health.

Section 2755(a) authorizes the Office of Regulatory Affairs to conduct examinations and investigations for purposes of this subtitle through officers and employees of the Department or through any health officer of a State, territory, or political subdivision. It provides that in the case of tobacco products packed in Puerto Rico or a territory, the Office shall attempt to make inspection at the first point of entry within the U.S., when in the opinion of the Office and with due regard to the enforcement of all of the provisions of this title, the facilities at the Office's disposal will permit of such inspection. As used in this subsection, the term "United States" means the States and the District of Columbia.

Section 2755(b) provides that where a tobacco product sample is collected for analysis, the Center shall, on request, provide a part of such sample for examination or analysis by any person named on the label, or the owner thereof, or the attorney or agent of such persons, except that the Secretary may, by regulation, make reasonable exceptions from, and impose reasonable terms and conditions relating to, the operation of this subsection as the Secretary finds it necessary for the proper administration of this subtitle. Subsection (c) provides that for purposes of enforcement of this title, records of any Federal Government executive branch department or independent establishment shall be open to inspection by any official of the Department of HHS duly authorized by the Office to make such inspection.

Section 2756 provides that any product that contains nicotine but is not a tobacco product as defined in section 2761, shall be considered to be a drug under section 201(g)(1)(C) of the Federal Food, Drug, and Cosmetic Act.

Section 2757(a) provides that nothing in this title, the Federal Cigarette Labeling and Advertising Act, the Comprehensive Smokeless Tobacco Health Education Act of 1986, or the Comprehensive Smoking Education Act shall prohibit a tobacco products manufacturer from providing consumers with information concerning tobacco product constituents, tobacco smoke, and the adverse effects of tobacco use in addition to the information that they are required to provide under this title or the Acts listed above. Section 2757(b) provides that nothing in this title, the Federal Cigarette Labeling and Advertising Act, or the Comprehensive Smoking Education Act

shall be interpreted to relieve any person from liability at common law or under State statutory law to any other person.

Section 2758 provides that nothing in this title, section 5 of the Federal Cigarette Labeling and Advertising Act, or the Comprehensive Smokeless Tobacco Health Education Act shall prevent any State or local government from enacting additional restrictions on the sale or distribution of tobacco products (including sales through vending machines and free samplings), on the placement or location of stationary outdoor advertising of tobacco products, or transit advertising of tobacco products under the control of State or local transit authorities, that is displayed solely with the geographic area governed by applicable State or local government, to the extent consistent with the First Amendment to the Constitution.

Subtitle D of title XXVII as authorized by the bill contains miscellaneous provisions. Section 2761 defines the following terms as used in this title—

"Adulterated" means that a tobacco product contains any poisonous or deleterious substance or additive that may render it injurious to health, except that in the case of a substance or additive that is not an added substance or additive such tobacco product shall not be adulterated if the quantity of such substance or additive in such tobacco product does not ordinarily render it injurious to health;

"Center" means the Center for Tobacco Products established under section 1501;

"Cigarette" means any roll of tobacco wrapped in paper, or in any substance not containing tobacco, that is to be burned and that is marketed for smoking pleasure only, and any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling is likely to be offered to, or purchased by consumers as a cigarette;

"Interstate Commerce" has the same meaning as in section 201(b) of the Federal Food, Drug, and Cosmetic Act;

"Minor" means any individual under age 18;

"Misbranded" means that the labeling of a tobacco product is false or misleading in any particular;

"Person" includes individual, partnership, corporation, and association;

"Recipient" means any entity or individual that has received a grant, contract, or cooperative agreement under this title;

"Smokeless tobacco" means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral cavity;

"State" means any State or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico;

"Territory" has the same meaning as in section 210(a)(2) of the Federal Food, Drug, and Cosmetic Act;

"Tobacco additive" means any ingredient that is added to a tobacco product in the process of manufacturing or producing a tobacco product;

"Tobacco product" means cigarettes, cigars, little cigars, pipe tobacco, smokeless tobacco, snuff, and other products that contains tobacco and is intended for human use.

"Tobacco use" means the use of any tobacco product that is used through smoking, inhalation, or mastication, and such term shall include the use of nasal and oral snuff.

Subtitle E of the new title XXVII authorizes assistance for School Programs and Policies to Prevent Tobacco Use. Section 2771 authorizes the Secretary, acting through the Director of CDC, to assist schools in the implementation of such programs and policies. The Secretary may make grants to, or enter into contracts with, State departments of health and education, and in consultation with such State departments, to local departments of health and local education agencies, and to other public entities, to assist in implementing effective programs and policies to prevent tobacco use. Not less than 80 percent of the amounts appropriated shall be made available to grant and contract recipients under this section. Subsection (c) of section 2771 authorizes appropriation of such sums as may be necessary in each of FY 1992 through 1994 to carry out this section.

Section 3(b) of the bill amends section 4(a) of the Federal Cigarette Labeling and Advertising Act by changing one of the required Surgeon General's warning labels from: "Cigarette Smoke Contains Carbon Monoxide," to "Smoking is Addictive. Once you start you may not be able to stop." It also repeals certain label requirements in section 4(b), and confidentiality provisions in section 7(b).

Section 4 of the bill amends the Drug-Free Schools and Communities Act to include tobacco education along with drug and alcohol education under certain provisions of the Act. Section 4(a) amends section 5122(a)(1) of the Drug-Free Schools Act to include State support for tobacco education along with drug and alcohol education under that authority. Subsection (b) amends section 5125(a) to require reference to tobacco education in requirements for local drug and alcohol abuse education and prevention programs. Subsection (c) amends section 5126(a) to include references to tobacco education in requirements for applications for local funds under the Act. Subsection (d) amends section 5132(b) to require the Secretary of Education to provide information for dissemination under section 2727 of the PHS Act and to include reference to tobacco use. Subsection (e) amends section 5141(b)(1) to include tobacco use under the definition of "drug abuse education and prevention" for purposes of the Drug-Free Schools Act.

Section 5 of the bill authorizes a program of Incentive Grants to Establish Smoke Free Schools. Subsection (a) authorizes appropriations of $5 million for FY 1992 and such sums as may be necessary for each of FY 1993 and 1994 to enable the Secretary of Education to make incentive grants under this section. Subsection (b) requires a State, to receive a grant under this section, to establish a policy that—

creates smoke-free elementary and secondary school buildings and grounds and school buses;

requires schools to establish smoking areas in which adults only are permitted to smoke, and ensure adequate safeguards exist to protect students from exposure to smoke; and

provides technical assistance to schools and other assistance to implement the provision of this section.

Subsection (c) of section 6 requires a State receiving a grant under this section to use the grant to disseminate materials to school personnel and students, and hold conferences and meetings, concerning the health hazards of tobacco use by students. Subsection (d) requires the Secretary of Education, in consultation with the Secretary of HHS, to promulgate necessary regulations to implement this section. Subsection (e) provides that a State receiving a grant under this section may place restrictions on use of tobacco products in schools in addition to those required in subsection (b). A State receiving funds under this section shall provide assistance under this section only to schools that are subject to State laws described in subsection (b). Subsection (f) provides that no grant may be made under this section unless an application is submitted in such form, manner, and containing such information as the Secretary of Education shall require.

Section 6(a) repeals section 3 of the Comprehensive Smoking Education Act. Section 7(b) repeals sections 2, 4, 5, and 8 of the Comprehensive Smokeless Tobacco Health Education Act of 1986.

Section 7 requires the Secretary of HHS, not later than 1 year after the date of enactment of this Act, in consultation with the Secretary of Agriculture, to conduct a study, and prepare and submit to the appropriate Congressional committees, a report on—

the use of pesticides on tobacco and the presence of pesticides in tobacco products;

the effect that the presence of pesticides in tobacco products has on human health; and

whether tolerances should be established for the use of pesticides in tobacco products.

Section 8 provides that nothing in this Act, or an amendment made by this Act, shall be construed to limit, restrict, expand, or otherwise affect the authority of the Federal Trade Commission.

X. ADDITIONAL VIEWS

We support public and private efforts to educate the citizens of this Country about the dangers of smoking tobacco and using smokeless tobacco. However, we dissent from our colleagues' approval of S. 1088. We share the Administration's view that this legislation is unnecessary. The $110 million price-tag of this bill cannot be justified.

Department of Health and Human Services Secretary Louis W. Sullivan presented the Administration's position on this legislation at our hearing on a comparable bill, S. 1883, in the 101st Congress. Secretary Sullivan told the Committee that the additional authorizations and requirements contained in that bill, reintroduced in this Congress as S. 1088, would not add measurably to the Department's current or planned efforts. In fact the Administration's FY 1992 budget nearly doubles (to $6.8 million) funding for the Office on Smoking and Health in the Department for various purposes, including "public information and education campaigns designed to encourage smokers to quit and to discourage the uptake of smoking, especially among adolescents."

This legislation, by contrast, would increase seven-fold (to $25 million) the authorization of the Office of Smoking and Health (to be renamed the Center on Tobacco and Health). It would authorize an additional $50 million for paid advertising to tell Americans that smoking is dangerous, an additional $25 million to help states enforce their laws concerning tobacco sales to minors, and an additional $10 million for other anti-tobacco programs.

With a Federal debt of over $3 trillion, it is particularly compelling that we exercise prudence and sound judgment on fiscal matters. In this case, it means saying "no" to that which is truly unnecessary.

THAD COCHRAN.
STROM THURMOND.

XI. CHANGES IN EXISTING LAW

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

PUBLIC HEALTH SERVICE ACT

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PART D—NATIONAL LIBRARY OF MEDICINE

Subpart 1—General Provisions

PURPOSE, ESTABLISHMENT, AND FUNCTIONS OF THE NATIONAL LIBRARY OF MEDICINE

SEC. 465. [286] (a) • • •

• • • • • • •

(f) Section [2701] *2801* shall be applicable to the acceptance and administration of gifts made for the benefit of the Library or for carrying out any of its functions, and the Board of Regents shall make recommendations to the Secretary relating to establishment within the Library of suitable memorials to the donors.

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GIFTS

SEC. 497. [289f] The Secretary may, in accordance with section [2701] *2801*, accept conditional gifts for the National Institutes of Health or a national research institute or for the acquisition of grounds or for the erection, equipment, or maintenance of facilities for the National Institutes of Health or a national research institute. Donations of $50,000 or over for the National Institutes of Health or a national research institute for carrying out the purposes of this title may be acknowledged by the establishment within the National Institutes of Health or a national research institute of suitable memorials to the donors.

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TITLE XXVI—HIV HEALTH CARE SERVICES PROGRAM

PART A—EMERGENCY RELIEF FOR AREAS WITH SUBSTANTIAL NEED FOR SERVICES

SEC. 2601. • • •

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TITLE XXVII—TOBACCO HEALTH AND EDUCATION PROGRAMS

Subtitle A—Center on Tobacco and Health

SEC. 2701. ESTABLISHMENT OF CENTER.

(a) IN GENERAL.—The Secretary shall establish a Center on Tobacco and Health within the Centers for Disease Control.

(b) FUNCTIONS.—The Secretary, acting through the Director of the Centers for Disease Control, shall—

(1) educate the public concerning the health consequences of using tobacco products, provide outreach services to youth, and

promote cessation of tobacco use through the provision of technical and material assistance to States, workplaces, and the media;

(2) support research efforts concerning patterns of tobacco use and cessation;

(3) provide assistance to States to enhance their efforts to enforce existing State laws concerning the sale of tobacco products to minors within the State;

(4) coordinate the education and research activities of the Federal Government with regard to tobacco products;

(5) document the additives that are contained in tobacco products, determine the additives that represent a health risk, restrict the use of tobacco additives that represent a significant additional health risk to the public, and ensure the disclosure of such information to the public in a manner that assures the protection of proprietary information;

(6) provide information about the hazards of tobacco use and about strategies for research, education, prevention, and cessation of tobacco use to foreign countries where tobacco use or mortality from tobacco use is on the rise; and

(7) carry out the programs established under this title.

(c) CONTRACTS.—The Secretary, acting through the Director of the Centers for Disease Control, may enter into contracts and cooperative agreements with Federal agencies within and outside of the Public Health Service in the exercise of the functions of the Secretary under this title.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $25,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 and 1994.

SEC. 2702. EDUCATIONAL AND RESEARCH ACTIVITIES.

The Secretary, acting through the Director of the Centers for Disease Control and in cooperation with non-Federal entities, shall carry out educational and research activities that shall include—

(1) the preparation and distribution of materials to educate the public concerning the health effects of using tobacco products;

(2) the preparation of public service announcements and the preparation and implementation of educational campaigns (that include paid advertising) to inform specific populations, including youth and the general population, of the health effects of using tobacco products and the opportunities for prevention and cessation of such use;

(3) the provision of information to film makers, broadcast media managers, and others regarding the role of the media in promoting tobacco use;

(4) the conduct of research on patterns of tobacco use, initiation, and cessation, and effective methods for disseminating such information;

(5) the development of plans to effectively provide outreach services to high risk groups and youth with such information; and

(6) the conduct of reviews of the effectiveness of information required to be contained in rotating warning labels on tobacco product packages and the undertaking of research to establish how to improve the effectiveness of such labels.

Subtitle B—Anti-Smoking Programs

CHAPTER 1—PUBLIC INFORMATION CAMPAIGNS

SEC. 2711. GRANTS FOR PUBLIC INFORMATION CAMPAIGNS.

(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control, shall make grants to public or nonprofit private entities, or enter into contracts or cooperative agreements with private entities, to conduct public information campaigns concerning the use of tobacco products.

(b) ACTIVITIES.—Assistance under this chapter shall be used for the development of a public information campaign that may include public service announcements, paid educational messages for print media, public transit advertising, electronic broadcast media, and any other mode of conveying information concerning tobacco products that the Secretary considers appropriate. Such activities shall—

(1) focus on seeking to discourage the initiation of use of tobacco products by youth and nonusers;

(2) encourage cessation of tobacco use by those who currently use tobacco products; and

(3) counter the messages contained in tobacco advertisements that promote tobacco use.

Such activities shall focus on one or more of the specific groups described in subsection (c)(1).

(c) CRITERIA.—The Secretary, acting through the Director of the Centers for Disease Control, shall publish the criteria used for awarding grants under this chapter in the Federal Register. Such criteria shall ensure that the applicant—

(1) will conduct activities that educate one or more communities or groups with high prevalences of tobacco use and high health risks from tobacco use, specifically youth, school dropouts, pregnant women, minorities, blue collar workers, and low income individuals;

(2) has a record of high quality campaigns of a comparable type; and

(3) has a record of high quality campaigns that educate the population groups specified in paragraph (1).

(d) PREFERENCE.—

(1) IN GENERAL.—In awarding grants, contracts, or agreements under this chapter, the Secretary shall give a preference to those applicants that will conduct activities that will most likely encompass an audience that includes several of the groups identified in subsection (c)(1).

(2) COMPREHENSIVENESS.—In awarding grants, contracts, or agreements under this chapter, the Secretary shall attempt to distribute such grants, contracts, or agreements so that all groups identified in subsection (c)(1) are reached with diverse

media. Single grants, contracts, or agreements shall not require that all groups are reached or that all media must be used.

SEC. 2712. GRANT APPLICATION.

(a) REQUIREMENT.—No grant, contract, or cooperative agreement shall be made or entered into under this chapter unless an application that meets the requirements of subsection (b) has been submitted to, and approved by, the Secretary.

(b) CONTENTS.—An application submitted under subsection (a) shall provide such agreements, assurances, and information, be in such form and submitted in such manner as the Secretary shall prescribe through notice in the Federal Register. Such application shall contain—

(1) a complete description of the plan of the applicant for the development of a public information campaign, including—

(A) an identification of the specific audiences that shall be educated by the campaign, including one or more communities or groups with high prevalences of tobacco use and high health risks from tobacco use, such as youth, school dropouts, minorities, blue collar workers, pregnant women, and low income individuals;

(B) an identification of the media to be used in the campaign and the geographic distribution of the campaign;

(C) a description of plans to test market the campaign with a relevant population group and in a relevant geographic area; and

(D) an assurance that effectiveness criteria will be implemented prior to the completion of the final plan that shall include an evaluation component to measure the overall effectiveness of the campaign; and

(2) a complete description of the kind, amount, distribution, and timing of informational messages and an assurance that the applicant will work with any media organizations or other groups with which such messages are placed to ensure that such organizations or groups will not lower the current frequency of public service announcements.

SEC. 2713. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to make grants or enter into contracts or agreements under this chapter, $50,000,000 for fiscal year 1992, and such sums as may be necessary in each of the fiscal years 1993 and 1994.

CHAPTER 2—MODEL STATE LEADERSHIP INCENTIVE GRANTS FOR ANTI-TOBACCO USE INTERVENTION

SEC. 2715. GRANT PROGRAM.

(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control, shall designate not less than 10 nor more than 20 States as model States under subsection (b), and shall make grants to each designated model State to assist the State in meeting the costs of improving State leadership concerning activities that—

(1) will prevent the initial use of tobacco products by minors;

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(2) will encourage the cessation of the use of tobacco products among the youth and other residents of the State, with particular attention directed towards those individuals and groups who are at high risk and suffer high prevalences of tobacco use, including school dropouts, minorities, low-income individuals, pregnant women and blue collar workers; and

(3) will implement and enforce a prohibition on the sale of tobacco products to minors.

(b) CRITERIA FOR MODEL STATE DESIGNATION.—To be designated as a model State under subsection (a), a State shall—

(1) have in effect a law that prohibits the sale of tobacco products to individuals under the age of 18;

(2) seek to improve the enforcement of the law referred to in paragraph (1);

(3) have in effect a law or regulation that is intended to reduce the use of, or access to, cigarette vending machines by minors who are under the age of 18;

(4) seek to improve the enforcement of the law or regulation referred to in paragraph (3); and

(5) have in effect, or seek to establish, a law or regulation that prohibits the provision of free samples of tobacco products.

SEC. 2716. APPLICATIONS.

To be eligible to be designated as a model State under section 2715 and receive a grant, a State shall prepare and submit to the Secretary an application that—

(1) includes a designation of a lead agency within the State that will work in conjunction with the Center, and contain assurances that such agency—

(A) has experience in matters that affect the public health;

(B) has expertise regarding the health effects and use of tobacco products;

(C) provides direct services for smoking cessation or referrals for such services;

(D) administers activities intended to prevent the initiation of use of tobacco products by minors who are under the age of 18, and by other individuals;

(E) will have a lead office or division that will have the experience and expertise described in subparagraphs (A) and (B) and will be chiefly responsible for the functions described in subparagraphs (C) and (D); and

(F) will provide personnel sufficient to staff the lead office or division;

(2) provides assurances that as part of a program to improve State enforcement of laws prohibiting the sale of tobacco products to minors the State, will—

(A) establish a mechanism for the reporting of citizen or other complaints to the office or division referred to in paragraph (1)(E) concerning retail establishments that sell tobacco products to minors in violation of State law;

(B) establish a program to make the public aware of the office or division referred to in paragraph (1)(E);

(C) establish a procedure by which the State may make a finding or a presumption that a retail establishment has a pattern or practice of selling tobacco products to minors in violation of State law, which includes—

(i) the provision of reasonable notice to the retail establishment and the owner or operator thereof; and

(ii) the provision of an opportunity to respond through a formal or informal hearing where according to State guidelines there is cause for such hearing;

(D) establish a procedure for the lead State agency to report periodically to the Center regarding the implementation of subparagraphs (A) through (C); and

(E) establish a procedure to request the assistance of the Office of Regulatory Affairs established under section 2741(b) to enforce State laws prohibiting the sale of tobacco products to minors;

(3) includes a complete description of the type of programs that will be established or assisted by or through the State, and a statement of goals, objectives, and timetables of such programs or activities that are consistent with the purposes of section 2715;

(4) specifies how the State will meet the criteria described in section 2717;

(5) includes copies of the State laws and regulations described in paragraphs (1) and (3) of section 2715(b); and

(6) is in such form, is submitted in such manner, and contains such information as the Secretary shall require, including such other information as the Secretary may by regulation prescribe.

SEC. 2717. GRANT CRITERIA.

The Secretary, acting through the Director of the Centers for Disease Control, shall establish criteria for awarding grants under this chapter. Such criteria shall include requirements that the State must provide—

(1) evidence that the State has made efforts to discourage tobacco use among the youth residing in such State;

(2) evidence of the need of the State for the assistance that is requested, as reflected in the prevalence of the use of tobacco within the State, especially among the populations that are described under section 2715(a)(2), and assurances that the State intends to concentrate its efforts on such populations; and

(3) evidence of the need of the State for the assistance that is requested, as reflected in the necessity for the development of statewide expertise in the planning of, and implementation of anti-tobacco use interventions;

(4) evidence of cooperative arrangements that the State has, or will enter into, with other entities that will participate in the activities established or assisted under the grant.

SEC. 2718. ASSISTANCE TO MODEL STATES.

The Secretary, acting through the Director of the Centers for Disease Control, shall provide to designated model States, on request—

(1) model printed materials for distribution to retail establishments concerning the health hazards and illegality of the sale of tobacco products to minors;

(2) support for, and assistance in, the planning of meetings, conferences, and conventions to educate retail establishments concerning the health hazards associated with tobacco products, the addictive nature of tobacco products, and State laws that prohibit the sale of tobacco products to minors;

(3) technical assistance in the development of reporting systems to identify specific retail establishments and retail chains that consistently sell tobacco products to minors in violation of State law;

(4) assistance in the development of notification systems to make specific retail establishments aware that such establishments are acting consistently in violation of State law;

(5) model notices to be distributed to retail establishments concerning the awareness of State authorities and of the Center of the continued sale by the establishment of tobacco products to minors in violation of State law; and

(6) information on the procedures to be followed by the State to obtain assistance from the Office of Regulatory Affairs to enforce State laws prohibiting the sale of tobacco products to minors.

SEC. 2719. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to make grants under this chapter, $25,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 and 1994.

(b) DISTRIBUTION OF FUNDS.—Funds shall be distributed under this chapter so that no State designated by the Secretary as a model State shall receive more than $2,000,000 for each fiscal year under this section.

CHAPTER 3—EDUCATION TO DECREASE TOBACCO USE IN THE WORKPLACE

SEC. 2721. PURPOSE.

The Secretary, acting through the Centers for Disease Control, shall make grants to public and nonprofit entities and enter into contracts and cooperative agreements with private entities (including employer organizations and employer and employee consortia) for educational activities to reduce the incidence of tobacco use among workers with high prevalences of tobacco use. Such grants, contracts, or cooperative agreements shall be used for meeting all or part of the costs of activities that will prevent the initiation, and encourage the cessation, of the use of tobacco products among workers and their families. In making grants and entering into contracts and cooperative agreements, the Secretary shall give priority to applicants that will educate groups with the highest prevalences of tobacco use.

SEC. 2722. ACTIVITIES AND CRITERIA.

(a) ACTIVITIES.—Assistance provided under this chapter shall be used for—

(1) education to promote the cessation of tobacco use among workers who have high prevalences of tobacco use;

(2) information and activities to provide family members of workers with education concerning the health consequences of tobacco use;

(3) training and education to develop the expertise of a health educator or other personnel who will perform the activities described in this subsection for workers and their families; and

(4) the development of audio, visual, or print materials that will facilitate any of the activities described in this subsection when such appropriate audio, visual, or print materials are not otherwise available.

(b) CRITERIA.—The Secretary, acting through the Director of the Centers for Disease Control, shall establish criteria for the awarding of grants under this chapter that shall include requirements that the applicant provide to the Secretary, in the application required under section 2723—

(1) evidence of—

(A) the potential for success of the proposed plan of the applicant; and

(B) the existence of any cooperative arrangements with other entities that will participate in the proposed plan;

(2) an agreement that activities to be conducted under the grant will be implemented with the cooperation of the employer; and

(3) any other information as the Secretary shall specify.

SEC. 2723. APPLICATION.

(a) REQUIREMENT.—No grant, contract or cooperative agreement shall be made under this chapter unless an application therefor has been submitted to, and approved by, the Secretary.

(b) CONTENTS.—An application submitted under subsection (a) shall be in such form and submitted in such manner as the Secretary shall prescribe through publication of a notice in the Federal Register. Such application shall contain—

(1) a complete description of the type of educational activities that the applicant intends to carry out with assistance provided under this chapter, including—

(A) a description of the activities that are designed to establish an ongoing anti-tobacco program that may include working cooperatively with existing anti-tobacco programs in the community or State; and

(B) an assurance that activities conducted under subparagraph (A) will demonstrate a concentration of effort to change tobacco use behavior in those groups identified in section 2721 and will include one or more of the activities described in section 2722;

(2) an assurance by the applicant of its ongoing commitments to support the anti-tobacco use activities after the period of the grant, contract, or cooperative agreement has expired;

(3) a description of the manner in which the applicant will meet the criteria specified in section 2722; and

(4) such other information as the Secretary may by regulation prescribe.

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SEC. 2724. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to make grants, contracts, or agreements under this chapter, $5,000,000 for each of the fiscal years 1992 through 1994.

CHAPTER 4—INFORMATION REGARDING CIGARETTE SMOKING

SEC. 2726. DEFINITIONS.

As used in this chapter:

(1) COMMITTEE.—The term "Committee" means the committee established under section 2727(c), or the committee established under section 3(b) of the Comprehensive Smoking Education Act (15 U.S.C. 1341(b)) as such section existed before the date of enactment of this section.

(2) UNITED STATES.—The term "United States", when used in a geographical sense, includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and the installations of the Armed Forces.

SEC. 2727. SMOKING RESEARCH, EDUCATION, AND INFORMATION IN GENERAL.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish and carry out a program to inform the public of the dangers to human health presented by cigarette smoking.

(b) ADMINISTRATION OF PROGRAM.—In carrying out the program established under subsection (a), the Secretary shall—

(1) conduct and support research on the effects of cigarette smoking and of passive smoke on human health and develop materials for informing the public of such effects;

(2) coordinate all research and educational programs and other activities within the Department of Health and Human Services that relate to the effect of cigarette smoking and passive smoke on human health and coordinate, through the Committee, with similar activities of other Federal agencies and of private agencies;

(3) establish and maintain liaison with appropriate private entities, other Federal agencies, and State and local public agencies concerning activities relating to the effect of cigarette smoking and passive smoke on human health;

(4) collect, analyze, and disseminate (through publications, bibliographies, and otherwise) information, studies, and other data relating to the effect of cigarette smoking and passive smoke on human health, and develop standards, criteria, and methodologies to improve information programs related to smoking and health;

(5) compile and make available information on State and local laws relating to the use and consumption of cigarettes;

(6) establish an outreach program to inform individuals under the age of 18 about the health consequences of smoking; and

(7) undertake any other additional information and research activities that the Secretary determines necessary and appropriate to carry out this section.

(c) COMMITTEE.—

(1) ESTABLISHMENT.—To carry out the activities described in paragraphs (2) and (3) of subsection (b), the Secretary shall establish an Interagency Committee on Smoking and Health.

(2) COMPOSITION.—The Committee established under paragraph (1) shall be composed of—

(A) the Director of the Center;

(B) members appointed by the Secretary from appropriate institutes and agencies of the Department, that may include the National Cancer Institute, the National Heart, Lung, and Blood Institute, the National Institute of Child Health and Human Development, the National Institute on Drug Abuse, Health Resources and Services Administration, and the Centers for Disease Control;

(C) one member appointed from each of the Federal Trade Commission, the Department of Education, the Department of Labor, and any other Federal agency designated by the Secretary, the appointment of whom shall be made by the head of the entity from which the member is appointed; and

(D) five members appointed by the Secretary from physicians and scientists who represent private entities involved in informing the public about the health effects of tobacco use and passive smoking.

(3) CHAIRPERSON.—The Secretary shall designate the chairperson of the Committee established under paragraph (1).

(4) EXPENSES.—While away from their homes or regular places of business in the performance of services for the Committee established under paragraph (1), members of such Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the manner provided by sections 5702 and 5703 of title 5 of the United States Code.

(5) OTHER INFORMATION.—The Secretary shall make available to the Committee established under paragraph (1) such staff, information, and other assistance as it may require to carry out its activities effectively.

(d) REPORT.—Not later than January 1, 1991, and biennially thereafter, the Secretary shall prepare and submit, to the appropriate Committees of Congress, a report that shall contain—

(1) an overview and assessment of Federal activities undertaken to inform the public of the health consequences of smoking and passive smoke and the extent of public knowledge of such consequences;

(2) a description of the activities of the Secretary and the Committee under subsection (a);

(3) information regarding the activities of the private sector taken in to deal with the effects of smoking on health; and

(4) such recommendations as the Secretary may consider appropriate.

SEC. 2728. PUBLIC EDUCATION REGARDING SMOKELESS TOBACCO.

(a) DEVELOPMENT.—

(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control, shall establish and carry out a program to inform the public of dangers to human health resulting from the use of smokeless tobacco products.

(2) DUTIES OF SECRETARY.—In carrying out the program established under paragraph (1) the Secretary, acting through the Director of the Centers for Disease Control, shall—

(A) develop educational programs and materials and public service announcements respecting the dangers to human health from the use of smokeless tobacco;

(B) make such programs, materials, and announcements available to States, local governments, school systems, the media, and such other entities as the Secretary determines appropriate to further the purposes of this section;

(C) conduct and support research concerning the effects of the use of smokeless tobacco on health; and

(D) collect, analyze, and disseminate information and studies on smokeless tobacco and health.

(3) CONSULTATION.—In developing programs, materials, and announcements under paragraph (2), the Secretary shall consult with the Secretary of Education, medical and public health entities, consumer groups, representatives of manufacturers of smokeless tobacco products, and other appropriate entities.

(b) ASSISTANCE.—The Secretary may provide technical assistance and make grants to States—

(1) to assist in the development of educational programs and materials and public service announcements respecting the dangers to human health from the use of smokeless tobacco;

(2) to assist in the distribution of such programs, materials, and announcements through the States; and

(3) to assist States in enacting laws and regulations to establish 18 as the minimum age for the purchase of smokeless tobacco.

SEC. 2729. REPORTS.

Not later than January 1, 1991, and biennially thereafter, the Secretary shall prepare and submit, to the appropriate Committees of Congress, a report containing—

(1) a description of the effects of health education efforts on the use of smokeless tobacco products;

(2) a description of the use by the public of smokeless tobacco products;

(3) an evaluation of the health effects of smokeless tobacco products and the identification of areas appropriate for further research; and

(4) such recommendations for legislation and administrative action as the Secretary considers appropriate.

CHAPTER 5—GENERAL PROVISIONS

SEC. 2735. ADMINISTRATIVE PROVISIONS.

(a) AMOUNT AND METHOD OF PAYMENT.—

(1) AMOUNT.—The Secretary shall determine the amount of a grant, contract, or agreement awarded under this subtitle.

(2) METHOD.—Payments under grants, contracts, or cooperative agreements awarded under this subtitle may be made in advance, on the basis of estimates, or by way of reimbursement, with necessary adjustments because of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary determines necessary to carry out the purposes of such grants, contracts, or agreements.

(b) MAINTENANCE OF EFFORT.—No grant, contract, or agreement shall be made under this subtitle unless the Secretary determines that there is satisfactory assurance that Federal funds made available under such a grant, contract, or agreement for any period will be so used as to supplement and, to the extent practical, increase the level of State, local, and other non-Federal funds that would, in the absence of such Federal funds, be made available for the program for which the grant, contract, or agreement is to be made and will in no event supplant such State, local and other non-Federal funds.

(c) SUPPLIES, EQUIPMENT, AND EMPLOYEE DETAIL.—

(1) IN GENERAL.—The Secretary, at the request of a recipient of a grant, contract, or cooperative agreement under this subtitle, may reduce the amount of such a grant, contract, or agreement by—

(A) the fair market value of any supplies or equipment furnished to the recipient by the Secretary;

(B) the amount of pay, allowances, and travel expenses incurred by any officer or employee of the Federal government when such officer or employee has been detailed to the recipient; and

(C) the amount of any other costs incurred in connection with the detail of an officer or employee as described in subparagraph (B);

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience, and at the request, of such recipient and for the purpose of carrying out activities under the grant, contract, or agreement.

(2) USE OF AMOUNT OF REDUCTION.—The amount by which any grant, contract, or agreement awarded under this subtitle is reduced under this subsection shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant, contract, or agreement is based, and such amount shall be considered as part of the grant, contract, or agreement that has been paid to the recipient.

(d) RECORDS.—Each recipient of a grant, contract, or agreement under this subtitle shall keep such records as the Secretary determines appropriate, including records that fully disclose—

(1) the amount and disposition by such recipient of the proceeds of such grant contract, or agreement;

(2) the total cost of the activity for which such grant, contract, or agreement was made;

(3) the amount of the cost of the activity for which such grant, contract, or agreement was made that has been received from other sources; and

(4) such other records as will facilitate an effective audit.

(e) AUDIT AND EXAMINATION OF RECORDS.—The Secretary and the Comptroller General of the United States shall have access to any books, documents, papers, and records of the recipient of a grant, contract, or cooperative agreement under this subtitle, for the purpose of conducting audits and examinations of such recipient that are pertinent to such grant, contract, or agreement.

Subtitle C—Prohibited Acts, Enforcement, and Additives

CHAPTER 1—PROHIBITED ACTS AND ENFORCEMENT

SEC. 2741. PROHIBITED ACTS.

(a) IN GENERAL.—The following acts and the causing thereof are prohibited:

(1) COMPLIANCE.—The failure of a manufacturer of a tobacco product to comply with section 2751.

(2) DELIVERY.—The introduction or delivery for introduction into interstate commerce of any tobacco product that is adulterated or misbranded.

(3) ADULTERATION OR MISBRANDING OF PRODUCT IN COMMERCE.—The adulteration or misbranding of any tobacco product in interstate commerce.

(4) RECEIPT.—The receipt in interstate commerce of any tobacco product that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(5) TRADE SECRET.—The using by any person to the advantage of such person, or revealing, other than to the Secretary or officers or employees of the Department, or to the courts when relevant in any judicial proceeding under this title, any information acquired under authority of this title concerning any method or process that as a trade secret is entitled to protection. This paragraph shall not be construed to prohibit disclosure of information to Congress.

(6) MISREPRESENTATION OF APPROVAL.—The representation or suggestion that an approval of any tobacco product is in effect under this title such representation or suggestion being false.

(7) COPIES OF MATERIAL.—The failure of the manufacturer of a tobacco product to maintain for transmittal, or to transmit, to any individual who makes a written request for information as to such product, true and correct copies of all printed matter that are required to be included in or on any package of a tobacco product.

(8) REPORTS, RECORDS, REQUIREMENTS.—The failure to make reports required, the failure to retain records required, or the failure to meet requirements prescribed, under this title.

(9) SALE TO MINORS.—The sale of tobacco products to minors in a State designated as a model State under section 2715.

(b) OFFICE OF REGULATORY AFFAIRS.—To carry out this subtitle, the Secretary shall establish within the Public Health Service, or designate an existing entity within such Service as, an Office of

Regulatory Affairs. Such office shall coordinate its work with other offices and agencies of the Federal Government.

SEC. 2712. ENFORCEMENT.

(a) IN GENERAL.—Any person who violates the provisions of this subtitle shall be subject to the penalties described in subsection (d).

(b) DENIAL OF DELIVERY.—With respect to a State that has been designated as a model State under section 2715, any retail establishment for which the State makes a finding that such retail establishment has been engaged in a pattern or practice of selling tobacco products to minors in violation of State law may be denied delivery of tobacco products by all distributors of such products within that State for a period of not to exceed 60 days from the date of such finding.

(c) BAN ON SHIPPING.—With respect to a State that has been designated as a model State under section 2715, in any case in which the State has made a finding that a retail establishment is, or has been, engaged in a pattern or practice of sale of tobacco products to minors—

(1) the State may place a temporary ban on the shipping of tobacco products to such retail establishment by distributors in that State;

(2) the State shall inform the appropriate distributors in that State that supply tobacco products to such retail establishment, that a temporary ban exists on the shipping of such products to such retail establishment;

(3) a distributor in the State shall not distribute tobacco products to such retail establishment for a period of not to exceed 60 days from the date on which the temporary ban is initiated; and

(4) if the distributor does not comply with the State temporary ban, the Secretary may seize such products from the distributor.

(d) JURISDICTION AND PENALTIES.—The district courts of the United States shall have jurisdiction over violations of section 2711 in the same manner, and may enforce the same and take the same actions, as described under sections 302, 303(a), 303(c)(1), 303(c)(2), 304(a)(1), 304(b), 304(c), 304(d), 304(e), 304(f), 306, and 307 of the Federal Food, Drug, and Cosmetic Act for such violations, except that any fines shall be calculated in accordance with the Criminal Fine Improvement Act of 1987, and no showing of interstate commerce shall be required.

(e) ENFORCEMENT BY CIVIL ACTION.—

(1) IN GENERAL.—Subject to the limitations contained in this subsection, an individual, including a class or organization on behalf of an individual, may bring a civil action to enforce this title in a court specified in paragraph (4) against a retail establishment or distributor of tobacco products

(2) TIMING OF COMMENCEMENT OF CIVIL ACTION.—No civil action may be commenced under this subsection later than 5 years after the date of the last event that constitutes the alleged violation.

(3) EXCLUSIVE JURISDICTION ON COMPLAINT.—On the filing of a complaint with a court under this subsection, the jurisdiction of the court shall be exclusive.

(4) VENUE.—An action may be brought under this subsection in a district court of the United States—

(A) in any appropriate judicial district under section 1391 of title 28, United States Code; or

(B) in the judicial district in the State in which the violation occurred.

(5) RELIEF.—

(A) INJUNCTIVE RELIEF.—In any civil action brought under this subsection, the court may grant as relief against the defendant any permanent or temporary injunction, temporary restraining order, or other equitable relief as the court determines appropriate.

(B) MONETARY DAMAGES.—If the court determines that a defendant is in violation of this title the defendant shall be liable for monetary damages in an amount equal to the actual damages suffered by the plaintiff.

(C) ATTORNEY'S FEES.—A prevailing party in an action brought under this subsection may be awarded a reasonable attorney's fee as part of the costs, in addition to any relief awarded.

(D) LIMITATION.—Damages awarded under subparagraph (B) shall not accrue from a date that is later than 2 years prior to the date on which a civil action is brought under this subsection.

SEC. 2713. REGULATIONS.

The Secretary shall have the authority to promulgate regulations to carry out this subtitle.

CHAPTER 2—ADDITIVES; INGREDIENTS; MISBRANDED AND ADULTERATED TOBACCO PRODUCTS

SEC. 2751. TAR, NICOTINE, CARBON MONOXIDE, AND TOBACCO ADDITIVES.

(a) REPORTING.—

(1) IN GENERAL.—It shall be unlawful for any person to manufacture, import, or package, any tobacco product brand name unless such person has provided to the Secretary, within the time periods described in paragraph (2), a complete list of—

(A) all brands of such tobacco products that shall include the levels of tar, nicotine, and carbon monoxide for each brand;

(B) for each tobacco product brand, each tobacco additive used in the manufacture of each such tobacco product brand name that such person manufactures, imports, or packages; and

(C) for each such additive, the range of the quantities of such additive used by such person in all tobacco product brand names manufactured, imported, or packaged by such person.

(2) TIME PERIOD FOR REPORTING REQUIREMENT.—

(A) ACTIONS ON DATE OF ENACTMENT.—With respect to any tobacco product brand name manufactured, imported,

or packed on the date of enactment of this title, the person manufacturing, importing, or packaging such product brand name shall provide to the Secretary the list required by paragraph (1) not later than 3 months after the date of enactment of this title.

(B) ACTIONS AFTER DATE OF ENACTMENT.—With respect to any tobacco product brand name manufactured, imported, or packed after the date of enactment of this section, the person manufacturing, importing, or packaging such product brand name shall provide to the Secretary the list required by paragraph (1) at least 3 months prior to the date on which such person commences to manufacture, import, or package such product brand name.

(b) ANALYSIS.—Any manufacturer, importer, or purchaser of a tobacco product shall provide the Secretary, on the request of the Secretary, with information regarding the impact of such additives on health.

(c) PUBLIC DISCLOSURE REQUIREMENTS.—

(1) PRESCRIPTION.—Not later than January 1, 1991, the Secretary shall by regulation prescribe requirements for manufacturers to place information on packages of tobacco products or in package inserts that are provided with such products so that the public will be adequately informed of the tar, nicotine, carbon monoxide, and tobacco additives contained in any brand or variety of tobacco products, except that spices, flavorings, fragrances, and colorings may be designated as spices, flavorings, fragrances, and colorings without specifically naming each.

(2) REDUCTIONS AND PROHIBITIONS ON USE OF ADDITIVES.—

(A) DETERMINATION.—If the Secretary determines that any tobacco additive in a tobacco product, regardless of the amount of such additive, either by itself or in conjunction with any other additive, significantly increases the risk of the product to human health, the Secretary may require that such levels of the tobacco additive in the tobacco product be reduced or that it be prohibited from use.

(B) BASIS.—

(i) IN GENERAL.—The determination under subparagraph (A) shall be made by regulation.

(ii) COMMENT.—Prior to the issuance of a regulation under clause (i), the Secretary shall provide notice and an opportunity for comment pursuant to section 553 of title 5, United States Code, except that the time for such comment shall not be less than 60 days. The Secretary, in the event that it appears that material facts may be in dispute concerning the proposed regulation, shall provide such appropriate opportunities for the presentation of evidence and for cross-examination of witnesses as the circumstances require either before the Secretary or an officer or employee of the Department designated by the Secretary.

(d) JUDICIAL REVIEW.—Judicial review of a determination under this section shall be governed by and shall be in accordance with section 409(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(g)), except that the requirements of paragraph (3) of such subsection shall not apply.

SEC. 2752. WARNING LABELS.

It shall be unlawful for any person to manufacture, import, or package, any tobacco product brand name unless the warning labels as required in section 4(a)(1) of the Federal Cigarette Labeling and Advertising Act shall—

(1) appear on the two most prominent sides of the product package on which the label is required;

(2) be in a size which is not less than 20 percent of the side on which the label is placed; and

(3) include letters in a height and thickness, which assures that the letters in the space provided for the statement will be no less legible, prominent, and conspicuous in size than other matter printed on the side of the package on which the label statement appears.

SEC. 2753. MISBRANDED TOBACCO PRODUCTS.

A tobacco product shall be considered to be misbranded if it is not labeled in accordance with the requirements prescribed by the Secretary under section 2751(c)(1).

SEC. 2754. ADULTERATED TOBACCO PRODUCTS.

A tobacco product shall be considered to be adulterated—

(1) if the level of any tobacco additive contained in the product is in violation of a requirement under section 2751(c)(2)(A);

(2) if it contains any tobacco additive that has been prohibited from use under section 2751(c)(2)(A);

(3) if it contains in whole or in part any filthy, putrid, or decomposed substance; or

(4) if it has been prepared, packed, or held under unsanitary conditions where it may have become contaminated with filth or where it may have been rendered more injurious to health.

SEC. 2755. EXAMINATIONS AND INVESTIGATIONS.

(a) AUTHORITY.—

(1) IN GENERAL.—The Office of Regulatory Affairs is authorized to conduct examinations and investigations for the purposes of this subtitle through officers and employees of the Department or through any health officer or employee of any State, territory, or political subdivision thereof, duly commissioned by the Secretary as an officer of the Department.

(2) PUERTO RICO AND THE TERRITORIES.—In the case of tobacco products packed in the Commonwealth of Puerto Rico or a territory the Office of Regulatory Affairs shall attempt to make inspection of such products at the first point of entry within the United States, when in the opinion of the Office of Regulatory Affairs and with due regard to the enforcement of all the provisions of this title, the facilities at the disposal of the Office of Regulatory Affairs will permit of such inspection.

(3) DEFINITION.—As used in this subsection the term 'United States" means the States and the District of Columbia.

(b) SAMPLES.—Where a sample of a tobacco product is collected for analysis under this subtitle the Center shall, on request, provide a part of such official sample for examination or analysis by any

person named on the label of the product, or the owner thereof, or the attorney or agent of such persons, except that the Secretary may, by regulation, make such reasonable exceptions from, and impose such reasonable terms and conditions relating to, the operation of this subsection as the Secretary finds necessary for the proper administration of the provisions of this subtitle.

(c) INSPECTION OF RECORDS.—For purposes of enforcement of this subtitle, records of any department or independent establishment in the executive branch of the Federal government shall be open to inspection by any official of the Department of Health and Human Services duly authorized by the Office of Regulatory Affairs to make such inspection.

SEC. 2756. NONTOBACCO NICOTINE CONTAINING PRODUCTS.

Any product that contains nicotine, whether or not that product also contains tobacco, but that is not a tobacco product as defined in section 2761, shall be considered to be a drug under section 201(g)(1)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)(C)).

SEC. 2757. CLARIFICATION.

(a) ADDITIONAL INFORMATION.—Nothing in this title, the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333 et seq.), the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4401 et seq.), or the Comprehensive Smoking Education Act shall prohibit (15 U.S.C. 1331 et seq.) a manufacturer of tobacco products from providing consumers with information concerning tobacco product constituents, tobacco smoke, and the adverse effects of tobacco use in addition to the information that such manufacturers are required to provide pursuant to this title, the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333 et seq.), and the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4401 et seq.).

(b) EFFECT ON LIABILITY LAW.—Nothing in this title, the Federal Cigarette Labeling and Advertising Act or the Comprehensive Smoking Education Act of 1984 shall be interpreted to relieve any person from liability at common law or under State statutory law to any other person.

SEC. 2758. PARTIAL REPEAL OF FEDERAL PREEMPTION ON STATE REGULATION OF ADVERTISING OF TOBACCO PRODUCTS.

Nothing in this title, section 5 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332, et seq.), or the Comprehensive Smokeless Tobacco Health Education Act (15 U.S.C. 4401 et seq.) shall prevent any State or local government from enacting additional restrictions on the sale or distribution of tobacco products (including sales through vending machines and free samplings), on the placement or location of stationary outdoor advertising of tobacco products, or transit advertising of tobacco products under the control of State or local transit authorities, that is displayed solely within the geographic area governed by the applicable State or local government, to the extent consistent with the First Amendment to the Constitution.

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Subtitle D—Miscellaneous Provisions

SEC. 2761. DEFINITIONS.

As used in this title:

(1) ADULTERATED.—The term "adulterated" means that a tobacco product contains any poisonous or deleterious substance or additive that may render it injurious to health, except that in the case of a substance or additive that is not an added substance or additive such tobacco product shall not be adulterated if the quantity of such substance or additive in such tobacco product does not ordinarily render it injurious to health.

(2) CENTER.—The term "Center" means the Center for Tobacco Products established under section 2701.

(3) CIGARETTE.—The term "cigarette" means—

(A) any roll of tobacco wrapped in paper, or in any substance not containing tobacco, that is to be burned and that is marketed for smoking pleasure only; and

(B) any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling is likely to be offered to, or purchased by consumers as a cigarette described in subparagraph (A).

(4) INTERSTATE COMMERCE.—The term "interstate commerce" has the same meaning given such term in section 201(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(b)).

(5) MINOR.—The term "minor" means any individual who is under the age of 18 years.

(6) MISBRANDED.—The term "misbranded" means that the labeling of a tobacco product is false or misleading in any particular.

(7) PERSON.—The term "person" includes individual, partnership, corporation, and association.

(8) RECIPIENT.—The term "recipient" means any entity or individual that has received a grant, contract, or cooperative agreement under this title.

(9) SMOKELESS TOBACCO.—The term "smokeless tobacco" means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral cavity.

(10) STATE.—The term "State" means any State or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(11) TERRITORY.—The term "territory" has the same meaning given such term in section 201(a)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(a)(2)).

(12) TOBACCO ADDITIVE.—The term "tobacco additive" means any ingredient that is added to a tobacco product in the process of manufacturing or producing a tobacco product.

(13) TOBACCO PRODUCT.—The term "tobacco product" means cigarettes, cigars, little cigars, pipe tobacco, smokeless tobacco, and snuff, and any other product that consists primarily of tobacco, is intended for human consumption, and is marketed for tobacco or smoking pleasure only.

(14) TOBACCO USE.—The term "tobacco use" means the use of any tobacco product that is used through smoking, inhalation, or mastication, and such term shall include the use of nasal and oral snuff.

Subtitle E—School Programs and Policies to Prevent Tobacco Use

SEC. 2771. SCHOOL PROGRAMS AND POLICIES TO PREVENT TOBACCO USE.

(a) GRANTS.—The Secretary, acting through the Director of the Centers for Disease Control, shall assist schools in the implementation of effective programs and policies to prevent tobacco use. The Secretary may make grants to, or enter into contracts with, State departments of health and education, and, in consultation with State health and education agencies, to local departments of health and local education agencies, and to other public entities, to assist in implementing effective programs and policies to prevent tobacco use.

(b) USE OF FUNDS.—Not less than 80 percent of the amounts appropriated under subsection (c) shall be made available to recipients of grants and contracts under this section.

(c) AUTHORIZATION OF APPROPRIATIONS. For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary in each of the fiscal years 1992, 1993, and 1994.

[TITLE XXVII] *TITLE XXVIII*—MISCELLANEOUS

GIFTS

SEC. [2701.] *2801.* [300aaa] (a) • • •

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USE OF IMMIGRATION STATION HOSPITALS

SEC. [2702.] *2802.* [300aaa-1] • • •

• • • • • • •

MONEY COLLECTED FOR CARE OF PATIENTS

SEC. [2703.] *2803.* [300aaa-2] • • •

• • • • • • •

TRANSPORTATION OF REMAINS OF OFFICERS

SEC. [2704.] *2804.* [300aaa-3] • • •

• • • • • • •

GRANTS TO FEDERAL INSTITUTIONS

SEC. [2705.] *2805.* [300aaa-4] • • •

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TRANSFER OF FUNDS

SEC. [2706.] *2806.* [300aaa-5] • • •

• • • • • • •

AVAILABILITY OF APPROPRIATIONS

SEC. [2707.] *2807.* [300aaa-6] • • •

• • • • • • •

UNAUTHORIZED WEARING OF UNIFORMS

SEC. [2708.] *2808.* [300aaa-7] • • •

• • • • • • •

ANNUAL REPORT

SEC. [2709.] *2809.* [300aaa-8] • • •

• • • • • • •

MEMORIALS AND OTHER ACKNOWLDGEMENTS

SEC. [2710.] *2810.* [300aaa-9] • • •

• • • • • • •

EVALUATION OF PROGRAMS

SEC. [2711.] *2811.* [300aaa-10] • • •

• • • • • • •

CONTRACT AUTHORITY

SEC. [2712.] *2812.* [300aaa-11] • • •

• • • • • • •

RECOVERY

SEC. [2713.] *2813.* [300aaa-12] (a) • • •

• • • • • • •

USE OF FISCAL AGENTS

SEC. [2714.] *2814.* [300aaa-13] (a) • • •

• • • • • • •

FEDERAL CIGARETTE LABELING AND ADVERTISING ACT

• • • • • • •

SEC. 1333. Labeling; requirements; conspicuous statement.
(a) Required warnings: packages; advertisements; billboards.
(1) • • •

• • • • • • •

[SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.]

SURGEON GENERAL'S WARNING: Smoking is Addictive. Once you start you may not be able to stop.

(2) * * *

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[SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.]

SURGEON GENERAL'S WARNING: Smoking is Addictive. Once you start you may not be able to stop.

(3) * * *

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[SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.]

SURGEON GENERAL'S WARNING: Smoking is Addictive. Once you start you may not be able to stop.

(b) Conspicuous statement: label statement format; outdoor billboard statement format.

[(1) Each label statement required in paragraph (1) of subsection (a) of this section shall be located in the place label statements were placed on cigarette packages as of October 12, 1984. The phrase "Surgeon General's Warning" shall appear in capital letters and the size of all other letters in the label shall be the same as the size of such letters as of October 12, 1984. All the letters in the label shall appear in conspicuous and legible type in contrast by typography, layout, or color with all other printed material on the package.]

[(2)] *(1)* The format of each label statement required by paragraph (2) of subsection (a) of this section shall be the format required for label statements in cigarette advertising as of October 12, 1984, except that the phrase "Surgeon General's Warning" shall appear in capital letters, the area of the rectangle enclosing the label shall be 50 per centum larger in size with a corresponding increase in the size of the type in the label, the width of the rule forming the border around the label shall be twice that in effect on October 12, 1984, and the label may be placed at a distance from the outer edge of the advertisement which is one-half the distance permitted on October 12, 1984. Each label statement shall appear in conspicuous and legible type in contrast by typography, layout, or color with all other printed material in the advertisement.

[(3)] *(2)* The format and type style of each label statement required by paragraph (3) of subsection (a) of this section shall be the format and type style required in outdoor billboard advertising as of October 12, 1984. Each such label statement shall be printed in capital letters of the height of the tallest letter in a label statement on outdoor advertising of the same dimension on October 12, 1984. Each such label statement shall be enclosed by a black border which is located within the perimeter of the format required in outdoor billboard advertising of the same dimension on October 12, 1984, and the width of which is twice the width of the vertical element of any letter in the label statement within the border.

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§§ 1335a. Cigarette Incredients

(a) List of ingredients; Secretary; manufacturers; packagers; importers

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[(2)(A) Any information provided to the Secretary under subsection (a) of this section shall be treated as trade secret or confidential information subject to section 552(b)(4) of Title 5 and section 1905 of Title 18 and shall not be revealed, except as provided in paragraph (1), to any person other than those authorized by the Secretary in carrying out their official duties under this section.

[(B) Subparagraph (A) does not authorize the withholding of a list provided under subsection (a) of this section from any duly authorized subcommittee or committee of the Congress. If a subcommittee or committee of the Congress requests the Secretary to provide it such a list, the Secretary shall make the list available to the subcommittee or committee and shall, at the same time, notify in writing the person who provided the list of such request.

[(C) The Secretary shall establish written procedures to assure the confidentiality of information provided under subsection (a) of this section. Such procedures shall include the designation of a duly authorized agent to serve as custodian of such information. The agent—

[(i) shall take physical possession of the information and, when not in use by a person authorized to have access to such information, shall store it in a locked cabinet or file, and

[(ii) shall maintain a complete record of any person who inspects or uses the information.

Such procedures shall require that any person permitted access to the information shall be instructed in writing not to disclose the information to anyone who is not entitled to have access to the information.]

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DRUG-FREE SCHOOLS AND COMMUNITIES ACT OF 1986

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SEC. 5101. SHORT TITLE.

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SEC. 5122. STATE PROGRAMS.

(a) * * *

* * * * * * * *

(1) local broadly-based programs for drug and alcohol abuse *and tobacco use* prevention, early intervention, rehabilitation referral, and education for all age groups;

* * * * * * * *

SEC. 5125. LOCAL DRUG ABUSE EDUCATION AND PREVENTION PROGRAMS.

(a) IN GENERAL.—Any amounts made available to local or intermediate educational agencies or consortia under section 5124(a)

shall be used for drug and alcohol abuse *and tobacco use* prevention and education programs and activities, including—

• • • • • • •

(11) public education programs on drug and alcohol [abuse] *abuse and tobacco use,* including programs utilizing professionals and former drug and alcohol abusers;

• • • • • • •

(14) special programs and activities to prevent drug and alcohol abuse among student athletes, involving their parents and family in such drug and alcohol abuse *and tobacco use* prevention efforts and using athletic programs and personnel in preventing drug and alcohol abuse among all students;

• • • • • • •

SEC. 5126. LOCAL APPLICATIONS.

(a) IN GENERAL.—(1) • • •

• • • • • • •

(D) describe the extent of the current [drug] *drug, tobacco* and alcohol problem in the schools of the applicant;

SEC. 5132. FEDERAL ACTIVITIES.

(a) • • •

• • • • • • •

(1) provide information on drug abuse education and prevention to the Secretary of Health and Human Services for dissemination by the clearinghouse for alcohol and drug abuse information established under section 509 of the Public Health Service Act *and for dissemination under section 2727 of the Public Health Service Act*;

(2) facilitate the utilization of appropriate means of communicating to students at all educational levels about the dangers of [drug] *drug and tobacco* use and alcohol abuse, especially involving the participation of entertainment personalities and athletes who are recognizable role models for many young people;

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PART E—GENERAL PROVISIONS

SEC. 5141. DEFINITIONS.

(a) • • •

• • • • • • •

(b) SPECIFIC DEFINITIONS.—For the purposes of this title, the following terms have the following meanings:

(1) The term "drug abuse education and prevention" means prevention, early intervention, rehabilitation referral, and education related to the abuse of [alcohol] *alcohol, the use of tobacco,* and the use and abuse of controlled, illegal, addictive, or harmful substances, including anabolic steroids.

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Attachment 2

Public Law 101-352
101st Congress

An Act

To direct the completion of the research recommended by the Technical Study Group on Cigarette and Little Cigar Fire Safety and to provide for an assessment of the practicality of a cigarette fire safety performance standard.

Aug. 10, 1990
[H.R. 293]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Fire Safe Cigarette Act of 1990.

SECTION 1. SHORT TITLE; FINDINGS.

15 USC 2054 note.

(a) SHORT TITLE.—This Act may be cited as the "Fire Safe Cigarette Act of 1990".

(b) FINDINGS.—The Congress finds that—

(1) cigarette-ignited fires are the leading cause of fire deaths in the United States,

(2) in 1987, there were 1,492 deaths from cigarette-ignited fires, 3,809 serious injuries, and $395,000,000 in property damage caused by such fires,

(3) the final report of the Technical Study Group on Cigarette and Little Cigar Fire Safety under the Cigarette Safety Act of 1984 determined that (A) it is technically feasible and may be commercially feasible to develop a cigarette that will have a significantly reduced propensity to ignite furniture and mattresses, and (B) the overall impact on other aspects of the United States society and economy may be minimal,

(4) the final report of the Technical Study Group on Cigarette and Little Cigar Fire Safety under the Cigarette Safety Act of 1984 further determined that the value of a cigarette with less of a likelihood to ignite furniture and mattresses which would prevent property damage and personal injury and loss of life is economically incalculable,

(5) it is appropriate for the Congress to require by law the completion of the research described in the final report of the Technical Study Group on Cigarette and Little Cigar Fire Safety and an assessment of the practicability of developing a performance standard to reduce cigarette ignition propensity, and

(6) it is appropriate for the Consumer Product Safety Commission to utilize its expertise to complete the recommendations for further work and report to Congress in a timely fashion.

SEC. 2. COMPLETION OF FIRE SAFETY RESEARCH.

15 USC 2054 note.

(a) CENTER FOR FIRE RESEARCH.—At the request of the Consumer Product Safety Commission, the National Institute for Standards and Technology's Center for Fire Research shall—

(1) develop a standard test method to determine cigarette ignition propensity,

(2) compile performance data for cigarettes using the standard test method developed under paragraph (1), and

(3) conduct laboratory studies on and computer modeling of ignition physics to develop valid, user-friendly predictive capability.

The Commission shall make such request not later than the expiration of 30 days after the date of the enactment of this Act.

(b) COMMISSION.—The Consumer Product Safety Commission shall—

(1) design and implement a study to collect baseline and followup data about the characteristics of cigarettes, products ignited, and smokers involved in fires, and

(2) develop information on societal costs of cigarette-ignited fires.

(c) HEALTH AND HUMAN SERVICES.—The Consumer Product Safety Commission, in consultation with the Secretary of Health and Human Services, shall develop information on changes in the toxicity of smoke and resultant health effects from cigarette prototypes. The Commission shall not obligate more than $50,000 to develop such information.

15 USC 2054 note.

SEC. 3. ADVISORY GROUP.

(a) ESTABLISHMENT.—There is established the Technical Advisory Group to advise and work with the Consumer Product Safety Commission and National Institute for Standards and Technology's Center for Fire Research on the implementation of this Act. The Technical Advisory Group may hold hearings to develop information to carry out its functions. The Technical Advisory Group shall terminate 1 month after the submission of the final report of the Chairman of the Consumer Product Safety Commission under section 4.

Termination date.

(b) MEMBERS.—The Technical Advisory Group shall consist of the same individuals appointed to the Technical Study Group on Cigarette and Little Cigar Fire Safety under section 3(a) of the Cigarette Safety Act of 1984. If such an individual is unavailable to serve on the Technical Advisory Group, the entity which such individual represented on such Technical Study Group shall submit to the Chairman of the Consumer Product Safety Commission the name of another individual to be appointed by the Chairman to represent such group on the Technical Advisory Group.

15 USC 2054 note.

SEC. 4. REPORTS.

The Chairman of the Consumer Product Safety Commission, in consultation with the Technical Advisory Group, shall submit to Congress three reports on the activities undertaken under section 2 as follows: The first such report shall be made not later than 13 months after the date of the enactment of this Act, the second such report shall be made not later than 25 months after such date, and the final such report shall be made not later than 36 months after such date.

15 USC 2054 note.

SEC. 5. CONFIDENTIALITY.

(a) IN GENERAL.—Any information provided to the National Institute for Standards and Technology's Center for Fire Research, to the Consumer Product Safety Commission, or to the Technical Advisory Group under section 2 which is designated as trade secret or confidential information shall be treated as trade secret or confidential information subject to section 552(b)(4) of title 5, United States Code, and section 1905 of title 18, United States Code, and shall not be revealed, except as provided under subsection (b). No member or employee of the Center for Fire Research, the Consumer Product Safety Commission, or the Technical Advisory Group and

no person assigned to or consulting with the Center for Fire Research, the Consumer Product Safety Commission, or the Technical Advisory Group, shall disclose any such information to any person who is not a member or employee of, assigned to, or consulting with, the Center for Fire Research, Consumer Product Safety Commission, or the Technical Advisory Group unless the person submitting such information specifically and in writing authorizes such disclosure.

(b) CONSTRUCTION.—Subsection (a) does not authorize the withholding of any information from any duly authorized subcommittee or committee of the Congress, except that if a subcommittee or committee of the Congress requests the Consumer Product Safety Commission, the National Institute for Standards and Technology's Center for Fire Research, or the Technical Advisory Group to provide such information, the Commission, the Center for Fire Research, or Technical Advisory Group shall notify the person who provided the information of such a request in writing.

Approved August 10, 1990.

LEGISLATIVE HISTORY: H.R. 293:

CONGRESSIONAL RECORD, Vol. 136 (1990):
July 30, considered and passed House and Senate.

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